Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1290

UNITED STATES OF AMERICA,
Petitioner

—v.—

ITT CONTINENTAL BAKING COMPANY.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED FEBRUARY 21, 1974
CERTIORARI GRANTED APRIL 29, 1974

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1290

UNITED STATES OF AMERICA,

Petitioner,

—v.—

ITT CONTINENTAL BAKING COMPANY.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

No. C-1220

UNITED STATES OF AMERICA, PLAINTIFF

v.

ITT CONTINENTAL BAKING COMPANY, DEFENDANT

DOCKET ENTRIES

Date	PROCEEDINGS
1968	
2/ 9	COMPLAINT
	Summons issued
2/17	Marshal's return on Summons by serving ITT Continental Baking Co. with agent for service on 12/12/68
12/26	Signed (NC) Order for Extension of Time, for deft to have to & including 2/3/69 to file answer to complaint . . . . Stipulation. eod 12/27/68
1969	
1/27	MOTION of Deft. for Stay of Penalties
	Memorandum in Support of Defts. Motion for Stay of Penalties . . . Cert. of Mailing
2/ 3	Defts. Motion for a More Definite Statement
	Memo. in support of Defts. Motion for a More Definite Statement . . . Cert. Mailing

Date	PROCEEDINGS
1969	
2/11	Cert. of Service by Mail of next below.
	Memo. in Opposition to Defts. Motion for Stay of Penalties
2/14	MOTION of Deft. for Continuance
	Signed (HC) Order that the hearing on Defts. Motion for Stay of Penalties be continued until further order of this Court.
2/17	Memo. in opposition to Defts. Motion for a More Definite Statement
	Cert. of Service by Mail
2/24	Reply Memo. in Support of Defts. Motion for Stay of Penalties . . . . Cert. of Mailing
2/25	Reply Memo. in Support of Defts. Motion for a More Definite Statement . . . Cert. Mail.
3/ 6	Hearing (HC) on Motions for More Definite Statement & for Stay of Penalties . . . entry of appearance of J. J. Gercke FTC Washington, DC for Pltf. & John H. Schafer for Deft. . . Ordered: Motion for more definite statement is denied, with qualifications—motion for stay of penalties is not determined at this time . . . Ordered Mr. Schafer to prepare order. eod 3/7/69
4/ 1	Signed (HC) Order on next above hearing. eod 4/2/69
4/ 7	Defts. Interrogs. to Plaintiff—First Set . . . Cert. of Mailing
4/16	Signed (HC) Order for Extension of Time for Pltfs. to Answer or object to Interrogs. pursuant to Stipulation. eod 4/17/69
4/29	Answer to Pltf. U.S.A. to Defendant's Interrogatories
4/29	Reporter's Transcript—Defts. Motion for A More Definite Statement; Defts. Motion for Stay of Penalties on 3/6/69

Date	PROCEEDINGS
1969	
	Pltfs. Objections to Interrogatories.
5/14	MOTION of Deft. to Compel Further Answers to Defts. First Set of Interrog. to Pltfs.
	Memo. in Support of Motion to Compel Further Answers to Defts. First Set of Interrog. . . . Cert. of Mailing
6/ 2	Memo. in Opposition to Defts. Motion to Compel Further Answers to Defts. First Set of Interrogs. to Plaintiff
6/2	Cert. of Mailing
6/12	Reply Memo. in Support of Defts. Motion to Compel Further Answers . . . Cert. of Mailing
	MOTION of Pltf. for Entry of Order denying Defts. Motion to Stay Penalties.
	Memo. in Support of Pltfs. Motion for Entry of Order
	Cert. of Mailing
6/25	MOTION of Pltf. for Entry of Order denying defts. Motion to Stay Penalties.
	Memo. in Support of Pltfs. Motion for Entry of Order
	Cert. of Service.
6/27	Signed (HC) Order on Defts. Motion for Stay of Penalties, that the Motion be & is Denied without prejudice to Deft. eod 6/27/69
8/ 4	Cert. of Conference Between Counsel
	Cert. of Mailing
1970	
2/13	Hearing (HC) objections to Interrogs. & Motion to compel further answers . . . Ordered Objections Waived . . . Motion to Compel Granted, to be answered in 30 days. eod 2/13/70

Date	PROCEEDINGS
1970	
3/23	Signed (HC) Order Granting Defts. Motion to Compel Further Answers to Interrogs. eod 3/23/70
4/ 6	Further Answers to Defts. Interrogs. . . . Cert. of Mailing
	ANSWER . . . Request for Jury Trial. . . . Cert. of Service.
6/ 1	Notice of Pltf. to Take Depositions . . . Cert. of Service.
6/ 8	Amended Notice as To Deposition of Herbert Van Wyk . . . Cert. of Service.
6/19	Marshal's return on Deposition Subpoena to Testify or Produce Documents.
6/22	Entry of Appearance for Pltfs.
8/ 4	Deposition of Eugene Sneesby
8/ 6	Pltfs. Notice to Take Depositions . . . Cert. of Mailing
8/24	Pltfs. Amended Notice to Take Depositions . . . Cert. of Service.
9/ 4	Amended Notice as to Depositions by Pltfs . . . Cert. of Service.
9/23	Pltfs. Amended Notice as to Depositions of W. C. Noorda & Alexander Stepanzoff Cert. of Mailing
10/16	Depositions of Melvin Hebert, Don Wheelwright & Ralph Wheelwright
	Reporter's Transcript of proceedings held on 2/13/70
12/ 1	Preliminary Pre-Trial Conference (HC) . . . Ordered Amended Complaint and Answer maybe filed . . . Defts. request for Jury Demand denied . . . submitted Pre-Trial Order to be revised . . . eod 12/2/70

Date	PROCEEDINGS
1970	
12/ 1	AMENDED COMPLAINT
	ANSWER to Amended Complaint . . . Cert. of Service
2/ 8	Signed (HC) Pre Trial Order. eod 12/11/70
1971	
1/ 1	MOTION of Pltf. for Extension of Time . . . approved by Attny. for deft.
1/ 5	Signed (HC) Order that Pltf. may have to & including 1/11/71 to file brief in Support of complaint; deft. may have to 2/22/71 to file response; & Pltf may have to 3/8/71 to file reply brief. eod 1/8/71
1/ 8	Pltfs. Brief in Support of Complaint.
2/24	Brief for Defendant . . . Cert. of Service.
3/ 5	Supplemental Stipulation
3/ 9	Reply Brief for United States . . . Cert. of Service.
4/21	Placed on Trailing Calendar Commencing 5/24/71.
5/27	Trial to Court (FMW) 1st Day . . . Ordered: James Corkey, Joseph J. Gerckel & Henry Banta are admitted for the purpose of this trial . . . Ordered: that permanent injunction be issued as set forth in the complaint . . . Penalty of $5,000 be assessed as to count 1 relative to Bon Ton Acquisition . . . Penalty of $5,000 assessed as to Ct. 2 relative to the Wyoming Baking Co. acquisition . . . Counsel to submit approved findings of fact by later part of july 1971. eod 5/28/71
6/ 3	MOTION of Pltf. for New Trial or, in the Alternative, for a Further Hearing . . . Affidavit of Carolyn J. McNeill . . . Cert. of Service.
6/ 9	Signed (FMW) Order that Pltf. Motion for new Trial is denied

Date	PROCEEDINGS
1971	
7/16	Reporter's Transcript of Preliminary Pre Trial Conference held on 12/1/70
7/30	MOTION of Deft. for Partial Reconsideration
8/ 2	Signed (FMW) Findings of Fact and Conclusions of Law . . . Penalties of $5,000 should be imposed upon deft. on both Ct. 1 & 2 and that an injunction should enter against deft. in the terms of the Commission's consent order against Deft., said injunction to expire on 5/15/72 . . . eod 8/3/71.
	Signed (FMW) Order that the time which either party may file any motions directed to the Findings and Conclusions or the Final Judgment and Order is extended to 9/15/71 . . . 8/3/71.
	Signed (FMW) FINAL JUDGMENT AND ORDER . . . Judgment is entered for pltf. in the amount of $5,000 as to both Cts. I & II of the Amended Complaint . . . Judgment is entered for deft. on Ct. III of the Amended Complaint . . . that from the date of entry of this Final Judgment & Order until 5/15/72, deft. is ordered to cease and desist from acquiring the whole or any part of the stock engaged in any state in the United States in the production and sale of bread . . . eod 8/3/71.
9/13	Pltf. MOTION to Alter or Amend Judgment
	Memo. in Support of Motion to Alter or Amend Judgment . . . Cert. of Service.
	Memo. in Opposition to Defts. Motion for Partial Reconsideration
9/23	Memo. in Opposition to Pltfs. Motion to Alter or Amend Judgment filed by Deft. . . . Cert. of Service.

Date	PROCEEDINGS
1971	
9/29	Signed (FMW) Order that Pltfs. Motion to Alter or Amend Judgment & Defts. Motion for Partial Reconsideration are Denied. eod 9/29/71
10/ 1	Reporter's Transcript of proceedings beginning 5/27/71
11/26	NOTICE OF APPEAL by Pltf.
12/10	NOTICE of Cross-Appeal by Deft.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 72-1072

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

v.

ITT CONTINENTAL BAKING COMPANY,
DEFENDANT-APPELLEE

DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
1/26/72	Cause docketed; record on appeal, Vol. I, (transcript), Vol. II, orig., (over 300 pp.); docketing statement, orig. & 3 cc.; appearance—appellant—Edelstein, Shapiro; order—leave to docket out of time granted—HKP
	Order—assigned to General Calendar; appellant's brief due 3/7/72—Lewis
1/31/72	Appellant's motion to defer the filing of appendix until after the brief have been filed—0 & 3cc—c/s
	Order: Appellant granted to defer filing of appendix until after briefs have been filed, HKP
	Appellee's Motion to Dismiss—0 & 4cc—and appellee's memo. in support of motion to dismiss—0 & 4cc—c/s

DATE	FILINGS—PROCEEDINGS
1/31/72	Order: Assigned to Summary Calendar—Lewis
	Motion to Dismiss letter to appellant
2/ 3/72	Appearance—ITT Cont. Baking—Schafer, Norton, Welborn, Cortez
2/ 4/72	Appearance—US—Treece
2/10/72	Response of Aplt. to Aple's Motion to Dismiss—0 & 3cc—c/s
2/17/72	Appellee's reply memorandum in support of aple motion to dismiss—0 & 4cc—c/s
2/18/72	Submitted to Rule 8 Panel
2/24/72	Stipulation exhibits 1-19C; Stipulation exhibits 20-36A; Stipulation exhibits-transcripts, depositions, interrogatories and answers
3/ 6/72	Appellant US motion to extend time to file briefs—0 & 3cc—c/s
3/ 6/72	Order: Appellant's motion *granted* for ext. of time to file briefs to 3/31/72.—HKP
	Corrected First page of reply memo. in support of aple motion to dismiss
3/14/72	Set for Hearing May 1972 Term
3/30/72	USA's motion for ext. of time to file brief—0 & 3cc—c/s
3/30/72	Aplts (U.S.A.) motion for ext. of time to file brief granted as requested in paragraph 3 of motion Clerk-Rule 11 HKP
5/19/72	Motion to dismiss *only* argued and submitted—Hill, Barrett, Langley
6/24/72	Appellant's additional authority (Govt)—letter—0 & 4cc—c/s (to panel)
6/ 8/72	Appellee's Supplementary memorandum—in support of motion to dismiss—0 & 3cc—c/s—aplt not opposed to filing (to panel)

DATE	FILINGS—PROCEEDINGS
7/12/72	Opinion on motion to dismiss; *Hill*, Barrett, Langley
	Order: Motion to dismiss filed by appellee is *denied.*
7/28/72	Order—returned to General Calendar; appellant's brief due 8/27/72—Lewis
8/28/72	Appellant's Preliminary Brief—0 & 3cc—c/s
	Letter (cc) to Appellee's indicating pts of record to be included in Appendix
9/29/72	Appellee's brief—Preliminary brief c/s
10/ 2/72	Corrected page for appellants prelim. brief.—4cc; c/s
10/10/72	Appellant's motion for ext. of time to file reply brief—0 & 3cc—c/s & to enlarge the page limitation. (Fwd. to Judge Lewis)
10/18/72	Order: Appellant's motion to enlarge the page limitation of its combined "reply" brief is *granted.*
	Appellant *granted* to 10/30/72 to file "reply" brief. (Lewis)
10/26/72	Appendix—10cc—c/s
10/30/72	Appellant's motion for ext. of time to file brief—0 & 3cc—c/s
10/31/72	Order: Appellant's motion for ext. of time to file reply brief. GRANTED—TO: 11/13/72—HKP—Counsel notified.
11/ 6/72	Appellee's brief—25cc—c/s
11/13/72	Appellant's brief—25cc—c/s
11/15/72	Appellant's preliminary reply brief—0 & 3cc—c/s

DATE	FILINGS—PROCEEDINGS
11/24/72	Appellant's reply brief—25cc—c/s
12/ 4/72	Appellee (ITT) motion for ext. of time to file reply brief & to enlarge the page limitation—stipulation—0 & 3cc—c/s
12/ 4/72	Cross-appellant's (appellee's) motion for ext. of time and enlargement of size fwd. to Judge Lewis
12/ 5/72	Order: Motions of cross-appellant for ext. of time to 12/14/72 to file reply brief and for enlargement of page limitation for said brief *granted.* (Lewis)
12/14/72	Appellee ITT Continental's Reply Brief—25cc—c/s
1/22/73	Set for March Term—Denver, Colorado
2/ 2/73	ITT Continental's motion to change date of oral argument—orig. & 1cc
	Motion to Court
2/ 7/73	Order—calendar setting vacated—Hill
4/13/73	Set for May 1973 Term of Court
5/16/73	Letter from Appellee Schafer requesting changing argument from 3rd case on Tuesday 5/22/73 to 1st or 2nd on Tuesday 5/22/73—
	(Fwd. to Panel)
5/17/73	Letter from atty for ITT consenting to changing argument to 1st case on Tues. 5/22/73
	(Dist. to Panel for ruling at time of argument—)
5/22/73	Argued and submitted—Seth, Laramore, Doyle
5/29/73	Appellant's supplemental authority—0 & 3cc—c/s
	Appellee's supplemental authority—0 & 3cc—c/s (to panel)
6/ 1/73	Appellant's response to appellee's supplemental authority—0 & 3cc—c/s

DATE	FILINGS—PROCEEDINGS
	(Fwd. to Panel)
9/24/73	Opinion—*Seth*, Laramore (Court of Claims), Doyle
	Judgment: Case is remanded only for the imposition of a penalty by the trial court for the violation of the order in the Sheppard Baking Company acquisition as a single violation, in whatever amount the court sees fit within the statutory limits, otherwise the case is affirmed; Doyle, Circuit Judge, concurring
10/16/73	Mandate to District Court Clerk in Nos. 72-1072 and 72-1073
10/16/73	O ROA to Clerk, Volumes I, II and Stipulation to Exhibits 1-19C. Stipulation to Exhibits 20 thru 36-A, Stipulation to Transcript, Depositions, Interrogatories and Answers.
10/23/73	Receipt—Mandate
10/23/73	Receipt—O ROA See Docket Entry of 10/16/73 for Description.
2/25/74	Supreme Court Notice of Filing of Petition for Certiorari—73-1290, 2-21-74

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 72-1073

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

ITT CONTINENTAL BAKING COMPANY,
DEFENDANT-APPELLANT

DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
1/26/72	Cause docketed; record on appeal, Vol. I (transcript), Vol. II, orig. (over 300 pp.); docketing statement, orig. & 3 cc.; appearance—appellee—Edelstein, Shapiro; order—leave granted to docket out of time—HKP
	Order—assigned to General Calendar; appellant's brief due 3/7/72—Lewis
	SEE NO. 72-1072 FOR ALL FURTHER DOCKET ENTRIES

IN THE UNITED STATES DISTRICT COURT
FOR COLORADO

Civil No. C-1220

UNITED STATES OF AMERICA, PLAINTIFF

v.

ITT CONTINENTAL BAKING COMPANY, a corporation,
DEFENDANT

AMENDED COMPLAINT

COUNT I

1. The United States of America, by the United States Attorney for the District of Colorado, acting under the direction of the Attorney General of the United States, upon request of the Federal Trade Commission, brings this action under Section 11(1) of the Clayton Act, as amended, 15 U.S.C. Section 21(1), and under Section 5(a)(1) of the Federal Trade Commission Act, as amended, 15 U.S.C. Section 45(a)(1), to recover civil penalties and for other relief for violations of a final order to divest and to cease and desist issued by the Federal Trade Commission.

2. This Court has jurisdiction under 28 U.S.C. Sections 1337, 1345 and 1355, 1395 and under 15 U.S.C. 49.

3. ITT Continental Baking Company is a corporation organized and doing business by virtue of the laws of the State of Delaware with its offices and principal place of business located at Halstead Avenue, Rye, New York. Prior to September 13, 1968 this business entity was for purposes pertinent to this complaint known as Continental Baking Company, a Delaware corporation with its offices and principal place of business located at Halstead Avenue, Rye, New York. On or about September 13, 1968 Continental Baking Company merged into ITT Continental Baking Company, a wholly-owned subsidiary of International Telephone Telegraph Corporation, a corporation organized and doing business by virtue of the laws of the State of Delaware with its offices and principal place of business located at 320 Park Avenue, New York, New York. As used in this complaint the term defendant means Continental Baking Company when referring to acts and practices occurring prior to September 13, 1968 and to ITT Continental Baking Company when referring to acts and practices subsequent to September 13, 1968. Defendant is one of the largest producers, distributors and sellers in the United States of bread and bread-type rolls and of other bakery and food products, and is engaged, directly or indirectly through subsidiary and affiliated companies, in commerce as commerce is defined in Section 1 of the said Clayton Act, and Section 4 of the said Federal Trade Commission Act, in supplying bakery and food products to retail stores and to institutional and other organizations located throughout the United States and in the State of Colorado. During 1966, defendant had net sales of $589,542,830, of which approximately $300,000,000 is accounted for by the sale of bread and bread-type rolls.

4. On May 11, 1962, acting pursuant to and in accordance with Section 11(b) of the said Clayton Act and Section 5(b) of the said Federal Trade Commission Act, and with consent of defendant, the Federal Trade Commission issued its decision and order in a proceeding wherein defendant was charged with violating provisions of Section 7 of the said Clayton Act, and Section 5 of the said Federal Trade Commission Act. The said decision and order of the Commission, a true and correct copy of which is attached hereto and made a part hereof as Exhibit A, provides in Section III:

> "IT IS FURTHER ORDERED, That for a period of ten (10) years from the date of issuance of this order by the Federal Trade Commission respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital, or assets of any concern, corporate or non-corporate, engaged in any state of the United States in the production and sale of bread and bread-type rolls

unless the Commission, on petition for modification of this Section III of this order, permits such an acquisition by respondent, said modification to be within the sole and final discretion of the Federal Trade Commission."

5. The said decision and order of the Commission referred to in paragraph 4 were duly served on defendant by registered mail on or about May 15, 1962, and the said order became final by operation of law on July 14, 1962, and has not at any time been set aside or modified, except with respect to Section I thereof which is not relevant herein.

6. Bon Ton, Inc. of Missoula, hereinafter referred to as Bon Ton, was formerly a bakery company or concern with its office, production and distribution plant located at Missoula, Montana. For many years prior to June, 1965 Bon Ton engaged in the production of Bon Ton labelled bread and bread-type rolls and the wholesale distribution and sale of these and other products in certain markets and areas of western Montana. Annual sales for this company exceeded $600,000 in 1963 and in 1964.

7. Beginning on or about May 10, 1965 and for approximately one year thereafter, defendant entered into a series of agreements, understandings or arrangements with Bon Ton and its president and sole owner, a Mr. Alexander Stepanzoff, which resulted in defendant's acquiring, directly or indirectly, the whole or a part of the assets of Bon Ton's bakery business. Pursuant to the said agreement, understandings or arrangements, Bon Ton discontinued its production of bread and bread-type rolls and defendant, in acquiring certain assets, both tangible and intangible, which related to or were used in connection with Bon Ton's bakery business, distributed and sold its bread and bread-type rolls under the label of defendant to customers and in markets formerly sold and supplied with such Bon Ton products.

8. In its acquisition of Bon Ton's assets, as herein alleged in paragraph 7, defendant did not petition the Commission for modification of Section III of the said order or receive Commission permission for such acquisition.

9. By acquiring the whole or a part of Bon Ton's assets, as herein alleged in paragraph 7, and for failing or refusing to petition the Commission or to receive its permission for such acquisition, as herein alleged in paragraph 8, defendant has each day from May 10, 1965, violated and is continuing to violate the said order.

COUNT II

10. Allegations as contained in paragraphs 1 through 5, inclusive, are repeated and realleged as though fully set forth therein.

11. Wyoming Baking Company, doing business as Bunny Bakery and hereinafter sometimes referred to as Bunny, was formerly a baking company or concern with its office and its production and distribution plant located at Casper, Wyoming. For many years prior to April 19, 1966, Bunny engaged in the production of Bunny labelled bread and bread-type rolls and the wholesale distribution and sale of these and other products in certain parts of Wyoming. Annual sales of Bunny were approximately $1,000,000 in 1964 and in 1965.

12. Beginning on or about April 19, 1966, and for approximately one year thereafter, defendant entered into a series of agreements, understandings or arrangements with Bunny and its president, a Mr. Eugene Sneesby, which resulted in defendant acquiring, directly or indirectly, the whole or a part of the assets of Bunny's bakery business. Pursuant to the said agreements, understandings or arrangements, Bunny discontinued its production or bread and bread-type rolls and defendant, in acquiring certain assets, both tangible and intangible, which related to or were used in connection with Bunny's bakery business, distributed and sold its bread and bread-type rolls under the label of defendant to customers and in markets formerly sold and supplied with such Bunny products.

13. In its acquisition of Bunny's assets, as herein alleged in paragraph 12, defendant did not petition the Commission for modification of Section III of the said

order or receive Commission permission for such acquisition.

14. By acquiring the whole or a part of Bunny's assets, as herein alleged in paragraph 12, and for failing or refusing to petition the Commission or to receive its permission for such acquisition, as herein alleged in paragraph 13, defendant has each day from April 19, 1966, violated and is continuing to violate the said order.

COUNT III

15. Allegations as contained in paragraphs 1 through 5, inclusive, are repeated and realleged as though fully set forth herein.

16. Sheppard Baking Company, hereinafter referred to as Sheppard, was formerly a bakery company or concern with its office and its production and distribution plant located at Durango, Colorado. For many years prior to August, 1966, Sheppard engaged in the production of Sheppard labelled bread and bread-type rolls and the wholesale distribution and sale of these and other products in certain parts of the State of Colorado. Annual sales of this company were approximately $200,000 in 1964 and 1965.

17. Beginning on or about August 30, 1966, and for a period of time thereafter, defendant entered into a series of agreements, understandings or arrangements with Sheppard and its president and majority shareholder, a Mr. Melvin C. Hebert, which resulted in defendant acquiring, directly or indirectly, the whole or a part of the assets of Sheppard's bakery business. Pursuant to the said agreements, understandings or arrangements, Sheppard discontinued its production of bread and bread-type rolls and defendant, in acquiring certain assets, both tangible and intangible, which related to or were used in connection with Sheppard's bakery business, distributed and sold its bread and bread-type rolls under the label of defendant to customers and in markets formerly sold and supplied with such Sheppard products.

18. In its acquisition of Sheppard's assets, as herein alleged in paragraph 17, defendant did not petition the

Commission for modification of Section III of the said order or receive Commission permission for such acquisition.

19. By acquiring the whole or a part of Sheppard, as herein alleged in paragraph 17, and for failing or refusing to petition the Commission or to receive its permission for such acquisition, as herein alleged in paragraph 18, defendant has each day from August 30, 1966, violated and is continuing to violate the said order.

WHEREFORE, PLAINTIFF DEMANDS:

1. That the aforementioned acquisitions by defendant under each Count be adjudged and decreed a violation of the said order of the Federal Trade Commission.

2. That judgment be entered against defendant on each Count in the amount of $1,000 per day per Count from the date of acquisition to the day of filing of this complaint, together with total costs and disbursements of this action.

3. That a permanent injunction be issued commanding the future compliance by the defendant, its officers, employees, agents and representatives, with the said order of the Federal Trade Commission.

4. That the plaintiff be granted such other and further relief as this Court deems just and proper.

Dated this 1st day of December 1970.

JAMES L. TREECE
United States Attorney

By: /s/ Carolyn J. McNeill
CAROLYN J. MCNEILL
Assistant U. S. Attorney
323 U. S. Court House
P. O. Box 1776
Denver, Colorado 80201
Attorney for Plaintiff

Of Counsel:

/s/ J. J. Gercke
JOSEPH J. GERCKE
Federal Trade Commission

/s/ James E. Corkey
JAMES E. CORKEY
Federal Trade Commission

[Caption Omitted]

ANSWER TO AMENDED COMPLAINT

Defendant, ITT Continental Baking Company, answers the amended complaint as defined by plaintiff's answers to interrogatories as follows:

FIRST DEFENSE

The amended complaint fails to state a claim against defendant upon which relief may be granted.

SECOND DEFENSE

Defendant answers the specific allegations of the amended complaint as follows:

COUNT I

1. Defendant admits that plaintiff claims that this action is brought under the statutes cited in paragraph 1.

2. Defendant admits that the allegations of paragraph 2 claim jurisdiction under the cited statutes.

3. Defendant admits the allegations of the first, third, and sixth sentences of paragraph 3, and admits the allegations of the fifth sentence except that it lacks knowledge or information sufficient to form a belief as to the truth of the allegation that defendant is one of the largest producers, distributors, and sellers in the United States of "other bakery and food products." Defendant denies the allegations of the second sentence of paragraph 3. The allegations of the fourth sentence require no response.

4. Defendant admits the allegations of paragraph 4.

5. Defendant admits that the said decision and Consent Order of the Commission referred to in paragraph 4 were duly served on Continental by registered mail on or about May 15, 1962, and that said Consent Order is a final order and has been modified in that on several occasions Continental sought and obtained the permission

of the Commission to make an acquisition of assets of the sort covered by the Consent Order.

6. Defendant admits the allegations of paragraph 6.

7. Defendant admits the written agreements alleged in paragraph 7 and identified in answer to Interrogatory 1(d) as Exhibits 1, 2, 3, 6; admits the facts set forth in the letters identified in answer to Interrogatory 1(d) as exhibits 4, 5, 7; and admits that it was Continental's understanding, based upon statements made orally by Mr. Stepanzoff, that it was the intention of Bon Ton, Inc. to terminate the production of bread and bread-type rolls before becoming a distributor of Continental's bread products. Wherefore, except as admitted above, defendant denies the allegations of paragraph 7.

8. Defendant admits that with respect to none of the agreements, understandings or arrangements of Continental alleged in paragraph 7 as defined in plaintiff's answers to Interrogatories 1(d) and 1(f) did Continental petition the Commission for modification of Section III of the Consent Order or otherwise receive Commission permission. Defendant denies the remaining allegations of paragraph 8.

9. Defendant denies the allegations of paragraph 9.

COUNT II

10. Defendant repeats and realleges its responses to paragraphs 1 through 5 inclusive.

11. Defendant admits the allegations of paragraph 11.

12. Defendant admits the written agreements alleged in this paragraph and identified in answer to Interrogatory 2(d) as Exhibits 8, 12, 13, 14, 15, 16; admits the facts set forth in the letters identified in answer to Interrogatory 2(d) as Exhibits 9, 10 and 11; admits the authenticity of the documents identified in answer to Interrogatory 2(d) as Exhibits 17 and 18; and admits that it was Continental's understanding, based upon oral statements made by Mr. Sneesby, that it was the intention of Wyoming Baking Company to terminate the production of bread and bread-type rolls before becoming a distributor of Continental's bread products. Defendant

states that it is without knowledge or information sufficient to form a belief as to whether or not Herbert Van Wyk and Eugene Sneesby formed the oral agreements, understandings or arrangements alleged in paragraph 12 as that paragraph has been defined in plaintiff's further answer to Interrogatory 2, and affirmatively alleges and avers that Van Wyk had no authority to make on behalf of Continental the agreements, understandings or arrangements specified in paragraphs (1), (2), and (5) of plaintiff's further answer to Interrogatory 2, and further alleges and avers that Continental never performed pursuant to any such agreements, understandings or arrangements. Defendant admits the oral arrangement specified in paragraph (3) of plaintiff's further answer to Interrogatory 2 and affirmatively alleges and avers that the Commission was notified of the possibility of said arrangement prior to any performance by Continental pursuant thereto and refused to inform Continental that it regarded such arrangements to be in violation of the Consent Order. Wherefore, except as admitted above, defendant denies the allegations of paragraph 12.

13. Defendant admits that in connection with none of the agreements, understandings or arrangements alleged in paragraph 12 as defined in plaintiff's answers to Interrogatories 2(d) and 2(f) and further answers to Interrogatory 2 did Continental petition the Commission for modification of Section III of the Consent Order or otherwise receive Commission permission for such acquisition. Defendant denies the remaining allegations of paragraph 13.

14. Defendant denies the allegations of paragraph 14.

COUNT III

15. Defendant repeats and realleges its responses to paragraphs 1 through 5 inclusive.

16. Defendant admits the allegations of paragraph 16.

17. Defendant admits the written agreement alleged in this paragraph and identified in answer to Interrogatory 3(d) as Exhibit 19, admits the authenticity of the documents specified in answer to Interrogatory 3(d) and

identified as Exhibits 20 and 21; and admits that it was Continental's understanding, based on oral statements made by Mr. Hebert, that it was the intention of Sheppard Baking Company to terminate the production of bread and bread-type rolls before becoming a distributor of Continental's bread products. Defendant states that it is without knowledge or information sufficient to form a belief as to whether or not Herbert Van Wyk and Melvin C. Hebert formed the oral agreements, understandings or arrangements alleged in paragraph 12 as that paragraph has been defined in plaintiff's further answer to Interrogatory 2, and affirmatively alleges and avers that Van Wyk had no authority to make on behalf of Continental the agreements, understandings or arrangements specified in paragraph (1) of the further answer to Interrogatory 2, and further alleges and avers that Continental never performed pursuant to any such agreement, understanding or arrangement. Wherefore, except as admitted above, defendant denies the allegations of paragraph 17.

18. Defendant admits that with respect to none of the agreements, understandings or arrangements of Continental alleged in paragraph 17 as defined in plaintiff's answer to Interrogatory 3(d) and 3(f) and further answers to Interrogatory 3 did Continental petition the Commission for modification of Section III of the Consent Order or otherwise receive Commission permission. Defendant denies the remaining allegations of paragraph 18.

19. Defendant denies the allegations of paragraph 19.

Third Defense

Under the rules of the Federal Trade Commission, the applicable statutes, and the Constitution, the failure of the Federal Trade Commission to notify defendant or Continental of its determination that there was a violation of the Consent Order and its failure to take any action for over eighteen months bars recovery of any penalties.

Fourth Defense

Defendant denies liability for any acts or omissions after September 13, 1968, for the reason that on that date the only party to the Consent Order of the Federal Trade Commission ceased to exist and defendant is not bound by that Consent Order.

Fifth Defense

This Court lacks jurisdiction for the reason that the amended complaint fails to allege that the Federal Trade Commission certified the facts to the Attorney General as is required before a penalty action may be commenced. 15 U.S.C. §§ 45, 56.

Sixth Defense

This Court lacks authority to award the injunctive relief requested in the amended complaint.

WHEREFORE, defendant prays that the Court enter judgment in its favor dismissing the amended complaint with costs and such other relief as to the Court may seem just.

/s/ Robert F. Welborn
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Of Counsel:

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[Caption Omitted]

PRETRIAL ORDER

The Court, having been advised by the parties that a stipulation of fact can be submitted to the Court which will make unnecessary any trial or other hearing for the taking of evidence on the issues other than relief and that these issues may be decided on the basis of said stipulation of fact and the briefs and oral arguments of the parties, it is hereby Ordered:

1. Jurisdiction of the Court is admitted.

2. The parties are, coincident with the entry of this pretrial order and with the approval of the Court, submitting an amended complaint and an answer to the amended complaint.

3. The plaintiff's claims with respect to each of the three counts are that:

(a) Defendant entered into a series of transactions with companies engaged in the production and sale of bread and bread type rolls which resulted in the acquisition by Continental of assets of these companies.

(b) Defendant acquired the assets in question without seeking or obtaining the prior approval of the Commission as required by the Commission's consent order of May 11, 1962.

(c) Defendant acquired and enjoyed the benefit of the assets and continued to hold and enjoy the benefit of many of the assets so acquired as of the date of the filing of the complaint.

(d) Defendant, through the acquisition of the assets in question, insured the extinguishment of three more companies from the list of independent producers and distributors of bread and bread type rolls. Continental extended its own operations and significantly reduced actual or potential competition in the production and sale of bread and bread type rolls.

(e) Maximum penalties requested by the complaint should be assessed against ITT Continental Baking Company for the violation of the Commission's Order; and that ITT Continental Baking Company should be required within a period of ninety (90) days to dispose of any interest it may have in the Missoula, Montana; Casper, Wyoming; and Durango, Colorado markets, including rights under distributorship and sales agreements, and be precluded from competing in the sale and distribution of bread and bread type rolls in those markets for a period of five (5) years.

4. Defendant denies that it or Continental has made any acquisition in violation of the Commission consent order and as to each count, if any, under which a violation of the consent order is found, defendant claims the remaining issues are:

(a) Whether the violation was through continuing failure or neglect to obey the order;

(b) Whether defendant is liable for any acts or omissions occurring after September 13, 1968, at which time Continental was merged into ITT Continental;

(c) Whether any penalties can be recovered with respect to the period of time after the Federal Trade Commission concluded its investigation of the transactions and prior to its notification to Continental or to ITT Continental that the Commission believed a violation of the order had occurred or was occurring;

(d) Whether the Court is authorized to award the injunctive and/or divesture relief requested by the plaintiff and, if so, what that relief should be;

(e) The proper monetary penalty, if any, which should be assessed.

5. The parties will file with the Court, on or before December 1, 1970, a Stipulation of Fact and no facts other than those contained in said stipulation, and the exhibits and other documents referenced therein, will be received by the Court in evidence. The parties recognize

that the Court may, in its discretion, permit or require additional evidence on the issues of amount of penalty, and other relief, if appropriate.

6. On or before January 4, 1971, the plaintiff shall file its brief in support of its complaint allegations.

7. On or before February 15, 1971, defendant shall file its brief in response.

8. On or before March 1, 1971, plaintiff shall file, if it desires, a reply to the defendant's brief.

9. Oral argument shall be heard on a date to be fixed by the Court.

/s/ Hatfield Chilson
Judge

December 1, 1970.

Approved:

/s/ Carolyn J. McNeill
Attorney for Plaintiff

/s/ Thomas S. Brown
Attorney for Defendant

[Caption Omitted]

STIPULATION OF FACT BY PARTIES

It is hereby stipulated and agreed by and between the undersigned attorneys for plaintiff and defendant, respectively, that the following facts are submitted and agreed upon by the parties and shall be taken as true without any further evidence being produced thereon.

It is further stipulated and agreed that the exhibits attached hereto and made a part hereof are authentic.

It is further stipulated and agreed that insofar as the substantive issue of violation of the Commission's order is concerned the record in this case shall include this stipulation and attached exhibits, the amended complaint, the amended answer, the plaintiff's answers to defendant's interrogatories, the transcripts of the testimony of Eugene Sneesby and Melvin Hebert given in Federal Trade Commission investigational hearings, and the depositions of Eugene Sneesby and Melvin Hebert.

It is also agreed that the stipulation of any fact, or of the authenticity of any document, shall not be construed as an admission by either party of the relevance, materiality, weight, significance or admissibility of that fact or document.

This stipulation is made for the purpose of expeditious resolution of this case only and is not intended by the parties to constitute, and does not constitute, an admission of fact or law in any other matter, dispute or proceeding.

The citations to the exhibits in the narrative portion of this stipulation are intended solely as a convenience to the Court.[1] It is not intended that significance of any exhibit is to be deemed limited in any way by such citation. Failure to cite any exhibit or portion thereof does not limit the right of either party to cite such exhibit or portion thereof in its briefs.

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[1] The designation S.E. (*i.e.*, Stipulation Exhibit) is used to identify the exhibits attached to and made a part of this stipulation.

Background Facts

1. Defendant [2] is one of the largest producers, distributors and sellers in the United States of bread and bread-type rolls and of other bakery products. It is a corporation engaged in commerce, as commerce is defined in Section 1 of the Clayton Act (38 Stat. 730; 15 U.S.C.A., Sec. 12) and Section 4 of the Federal Trade Commission Act, (52 Stat. 111; 15 U.S.C.A., Sec. 44) in manufacturing, distributing, and selling bakery products to retail stores, institutions and other organizations located throughout the United States. During 1966, defendant had net sales of $588,542,830, of which approximately $300,000,000 was accounted for by the sale of bread and bread-type rolls.[3]

2. For the purpose of this stipulation, the definition of bread and bread-type rolls shall be that used by the Bureau of the Census as set forth in the Census of Manufacturers category S.I.C. 20511. The Bureau of the Census classifies bread and bread-type rolls in a category separate and distinct from all other bakery products, S.I.C. 20511. For purposes of this case bread and bread-type rolls are a separate and distinct line of commerce. They contain different ingredients and require different machinery and personnel for make up and baking than do cake and sweet goods.

3. Because of the nature of the goods produced, the distribution and sales operations of a baking plant are regional in nature. The distribution of bread and related products is limited by the distance they can be economically shipped from the plant while retaining their freshness.

[2] As used in this stipulation the term "defendant" refers to Continental Baking Company when the reference is to a date prior to September 13, 1968 and to ITT Continental Baking Company after that date.

[3] As to general nature, size and scope of operations of Continental Baking Company and ITT Continental Baking Company, see Continental Baking Company Annual Report, 1966 (S.E. 1); and Prospectus, ITT Continental Baking Company of June 25, 1970 (S.E. 2, pp. 1, 5-7, of original). *See also* Notice of Special Meeting of Stockholders, dated August 6, 1968 (S.E. 3, pp. 1, 31-34, of original).

4. In this line of business, a "route" has some special significance in that deliveries from a distribution plant will follow a prescribed route or geographical pattern. The customers on the route are serviced regularly. The driver of the truck or routeman services established customers and tries to obtain new ones. This driver, routeman or salesman is generally paid a commission on the sales made, in addition to a guaranteed salary. His stops include the stores, restaurants, institutions, etc., located on the route that he follows. At some stops he delivers on credit, at others only on a C.O.D. basis.

5. Route books and customers lists are assets of any person, firm or corporation engaged in the distribution and sale of bakery products.

Prior Federal Trade Commission Proceedings

6. On May 5, 1960, the Federal Trade Commission ("Commission") issued a complaint (S.E. 4) *In The Matter of Continental Baking Company*, Docket No. 7880, charging that Continental Baking Company ("Continental") had violated Section 7 of the amended Clayton Act (64 Stat. 1125; 15 U.S.C.A., Sec. 18) in connection with its acquisition of Omar, Inc., and Rochester Bread Company in November 1958, Braun Baking Company in December 1958 and a variety of other companies during the period 1952 through 1958, all of which were producers and sellers of bread and bread-type rolls. The complaint also charged Continental with violation of Section 5 of the Federal Trade Commission Act (38 Stat. 719, as amended; 15 U.S.C.A., Sec. 45) by an alleged continuous practice of acquiring various baking concerns throughout the United States.

7. After extensive administrative proceedings, counsel for Continental and Commission counsel negotiated a mutually acceptable "Agreement Containing Consent Order to Divest and to Cease and Desist" (S.E. 5).

8. This "Agreement Containing Consent Order to Divest and to Cease and Desist" was adopted by the Hearing Examiner in issuing his initial decision and order on April 2, 1962 (S.E. 6), and the Hearing Examiner's initial decision and order were adopted by the Commission and issued as its decision and order on May 11, 1962 (S.E. 7).

9. The Commission's decision and order ("consent order") were duly served on Continental by registered mail on May 15, 1962, and became final under the provisions of 15 U.S.C. §§ 21(g) and 45(g) by operation of law on July 14, 1962. Section III of the consent order provides:

> "IT IS FURTHER ORDERED, That for a period of ten (10) years from the date of issuance of this order by the Federal Trade Commission respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital, or assets of any concern, corporate or non-corporate, engaged in any state of the United States in the production and sale of bread and bread-type rolls unless the Commission, on petition for modification of this Section III of this order permits such an acquisition by respondent, said modification to be within the sole and final discretion of the Federal Trade Commission." (S.E. 6, 7).

Continental's Merger with ITT Continental

10. On June 12, 1968, after protracted arms-length negotiations a Plan and Agreement of Merger ("Agreement") was entered into between Continental, a publicly-held Delaware corporation, International Telephone and Telegraph Corporation ("ITT"), a publicly-held Delaware corporation, and ITT Continental Baking Company ("ITT Continental"), a Delaware corporation which was and is a wholly-owned subsidiary of ITT. (S.E. 3, pp. 1-6, 15-22, 31-34, Annex A 1-20).

11. Pursuant to the Agreement, on September 13, 1968, Continental ceased to exist as a corporation. Since

September 13, 1968 the business previously carried on by Continental, including the production and distribution of bread and bread-type rolls, has been carried on by ITT Continental.

12. Prior to the merger ITT Continental had no assets or employees.

13. The officers of Continental continued to hold their respective positions with ITT Continental immediately after the merger. There have been more changes in management personnel since that time.

14. Immediately after the merger the assets of ITT Continental were the same as the assets of Continental prior to the merger.

15. After the merger ITT Continental continued to operate the same plants and facilities and with the same organization as previously used by Continental. ITT Continental continued to sell and distribute the same products, in the same manner, to the same customers as had previously been done by Continental.

16. At the time of the foregoing merger, no stockholder of Continental owned as much as 4 percent of Continental's common stock, and ITT owned no such stock. At that time, no amount of ITT stock was owned by Continental. Since the merger, and as a result thereof, 100 percent of ITT Continental's common stock has been owned by ITT.

17. Prior to the merger, no officer, director or employee of Continental was affiliated with ITT. At that time Continental's management was responsible to Continental's Board of Directors, of which a majority were also officers of Continental, and Continental's Board of Directors was in turn responsible to the more than 11,000 holders of Continental's more than 4,000,000 shares of stock.

18. At the time of the merger ITT knew of the consent order against Continental. The merger was to no extent whatever entered into or consummated for the purpose of evading the consent order in any way.

19. At the present time, and as a result of the merger, a majority of the directors of ITT Continental are officers of ITT and were associated with ITT in responsi-

ble positions prior to the merger. ITT Continental's management is thus responsible to a board of directors the majority of which are not officers of ITT Continental, and ITT Continental's board of directors is responsible to a single stockholder, ITT. Three assistant officers of ITT are also assistant officers of ITT Continental.

20. In the Continental "Notice of Special Meeting of Stockholders," dated August 6, 1968 it was stated that "[t]he business conducted by Continental prior to consummation of the transaction [*i.e.*, the merger] will be continued thereafter by New Continental, a new wholly-owned subsidiary of ITT which will be named ITT Contiental Baking Company." (S.E. 3, p. 5.) The Notice also stated that "New Continental will assume all the liabilities of Continental." (S.E. 3, p. 4.)

Continental's Compliance With The Consent Order

21. Since the effective date of the consent order Continental and ITT Continental from time to time have re quested approval of the Commission to make various asset acquisitions from companies engaged in the production and sale of bread and bread-type rolls (S.E. 8-17). In some instances approval was granted (S.E. 8A, 9A, 10A, 12A, 13A, 14A, 15A, 17A) and in other instances denied (S.E. 11A, 16A).

22. Since the effective date of the consent order Continental and ITT Continental have taken all actions required of them under the provisions of the consent order other than Section III.

23. During the time that Section III of the consent order was operative Continental entered into certain transactions without obtaining permission of the Commission or otherwise seeking any modification of Section III of the consent order, which permission or modification plaintiff claims was required. These transactions are the subject matter of Counts I, II and III of the complaint and involve Bon Ton, Inc., of Missoula, Montana; Wyoming Baking Company (d/b/a Bunny Bakery) of Casper, Wyoming; and Sheppard Baking Company of Durango, Colorado, respectively.

Count I

24. Bon Ton, Inc. (hereinafter sometimes referred to as "Bon Ton") was at all times pertinent to this proceeding a Montana corporation with its principal office and place of business in Missoula, Montana.

25. At all times pertinent hereto the corporate stock of Bon Ton was owned, except for certain qualifying shares, by Mr. Alexander Stepanzoff, its president. He controlled the policies of the company and was in sole charge of its operations. All actions by Stepanzoff referred to herein were for and on behalf of Bon Ton.

26. For many years prior to July 12, 1965, Bon Ton had been engaged in the production and sale of bakery products, including bread and bread-type rolls.

27. The bakery products produced by Bon Ton, including bread and bread-type rolls, were sold by it at wholesale to a variety of customers over some thirteen routes located in the western Montana area. Four of these routes were in and around Missoula, three in and around Kalespill, and one each in and around Hamilton, Polson, Plains, Deer Lodge, Anaconda and Philipsburg.

28. Prior to July 12, 1965, Continental had no distribution of bread and bread-type rolls in the western Montana area served by Bon Ton.

29. In addition to the bread and bread-type rolls which it produced, Bon Ton had for many years also sold and distributed to its customers on its several routes cake products produced by Continental under Continental's "Hostess" trade name. (S.E. 18, 18A).[4]

30. Bon Ton had total annual sales of $653,892.12 in 1963 and $613,174.17 in 1964. About 76 percent of such sales were of bread and bread-type rolls.

31. In 1964 Bon Ton's President, Alexander Stepanzoff, approached Continental's Spokane plant manager, Mr. W. C. Noorda, concerning the possibility of the sale of Bon Ton to Continental. Stepanzoff was then in his early

[4] S.E. 18 is a letter dated April 10, 1967 from Roy M. Anderson, Vice-President and General Counsel of Continental Baking Company, to Carl J. Batter, Jr., Attorney, Compliance Division, Federal Trade Commission. S.E. 18A-18G are enclosures of S.E. 18.

sixties, had had various medical problems in 1962 and 1963, and his family was urging him to get out of the bakery business. Stepanzoff faced a shortage of competent personnel, particularly in a supervisory capacity, and Bon Ton had sustained its first operating loss in 1964 (S.E. 18, 18F).

32. Noorda advised Stepanzoff that Continental could not purchase Bon Ton because of the outstanding Commission consent order (S.E. 18).

33. In the course of further discussions Stepanzoff suggested working out a bread distributorship,[5] and Continental agreed it would sell to Bon Ton its requirements of Continental's bread and bread-type rolls for resale as a distributor of these products. Stepanzoff had been a distributor of Continental's cake products for years, and felt that he had fewer problems as a distributor than as a producer and distributor of his own products (S.E. 18F).

34. A "Sales Agreement" (S.E. 18B) was entered into between Continental and Bon Ton in May 1965. This agreement provided that Continental would sell and Bon Ton would buy for resale Continental's bread and bread-type rolls and provided for the establishment of Bon Ton as a distributor of these products. It was Continental's and Bon Ton's understanding that Bon Ton would cease production of bread and bread-type rolls before it became a distributor of Continental's bread and bread-type rolls.

35. It was also Continental's and Bon Ton's understanding that initially most of the bread and bread-type rolls produced by Continental for the Bon Ton distributorship would carry Bon Ton labels and be sold and distributed by Bon Ton over the routes and to the customers it had served while in production, and that eventually the Bon Ton labeled bread and bread-type rolls

[5] The term "distributor" and "distributorship" are used throughout this stipulation interchangeably with the words "dealer" and "dealership". The nature of a dealer's or distributor's operations is outlined in the agreements between Continental and Bon Ton, Wyoming and Sheppard Baking (S.E. 18B, 22, 30).

would be phased out and replaced by Continental labeled bread and bread-type rolls.

36. Under the terms of the sales agreement Bon Ton was given an exclusive dealership in the territory in western Montana it had been serving.

37. Additionally, under the sales agreement Stepanzoff was required to sell in the territory allotted to him (which was the area previously served by Bon Ton) only those products carried by Continental in its line and to purchase all of his requirements of such products from Continental. To sell any other products Stepanzoff had to obtain prior written approval from Continental (S.E. 18B). No requests for such approval were made or denied.

38. The sales agreement which established the distributorship also contained a covenant on the part of Stepanzoff that in event of the termination of the agreement he would not compete with Continental or with another dealer of Continental in the sale of products similar to those covered by the agreement and in the territory covered by the agreement for a period of five years (S.E. 18B).

39. The sales agreement also provided Continental with an option to purchase the dealership at a price of $37,500 in the event of Stepanzoff's death or termination of the agreement pursuant to the provisions for renewal (S.E. 18B). The agreement was never terminated pursuant to the provisions for renewal.

40. The sales agreement was signed in May 1965 and was put into effect on the weekend of July 10th, 1965.

41. On July 10th Bon Ton terminated its production of bread and bread-type rolls and on the following Monday, July 12, 1965, began to function as a distributor of bread and bread-type rolls produced by Continental.

42. At the time of the changeover Bon Ton had an inventory of Bon Ton labeled packaging material. This material was transferred to Continental's Spokane plant and for a period of time beginning on July 12, 1965, Continental supplied the distributorship with certain bakery products, including bread and bread-type rolls wrapped in this packaging material carrying the Bon Ton labels

and trademark. These labels and the trademark had been used by Bon Ton when it was in production and were owned and controlled by it. The Bon Ton labeled products were phased out after a period of time and thereafter almost all bakery products sold to this distributor carried Continental labels. To a very limited extent Continental supplied this distributorship with products produced by others.

43. After July 12, 1965, Bon Ton sold and distributed the products produced at or obtained from Continental's Spokane, Washington plant over the same routes and to the same customers and in substantially the same quantities it had sold and distributed similar products produced at its own plant prior to that date.

44. On July 12, 1965, Stepanzoff deposited in the Bon Ton bakery account with the Western Building and Loan Association in Missoula, Montana, a Continental check drawn in his favor in the amount of $37,500. The check was dated June 5, 1965 (S.E. 19, 19C).[6]

45. This $37,500 has been described by Continental and Stepanzoff as a non-interest bearing loan which Stepanzoff needed to meet Continental's credit requirements. Stepanzoff stated that Continental insisted on some security for the advance of $37,500 and accordingly Stepanzoff gave an option to purchase the distributorship for $37,500, which he considered to be its then fair market value (S.E. 18F, 19).

46. Early in 1966 Bon Ton was confronted with the prospect of a competitive disadvantage with respect to his principal competitor, Eddy Baking Company, because of union demands for a five-day week. Eddy operated on a six-day basis, and Continental's plant in Spokane operated on a five-day basis. A five-day week would compel Bon Ton to distribute two-day old bread on one day each week (S.E. 18F).

[6] S.E. 19 is a letter dated June 27, 1967, from Roy M. Anderson of Continental Baking Company to Carl J. Batter, Jr., Compliance Division, Federal Trade Commission, in reply to a Commission letter requesting additional information regarding the Bon Ton Bakery of Missoula, Montana. S.E. 19A-19C are enclosures of S.E. 19.

47. On March 1, 1966, Stepanzoff was hospitalized with a possible second heart attack and his family insisted that he get out of the distributorship (S.E. 18F).

48. Early in March 1966 Stepanzoff contacted Continental's Spokane Bakery Manager requesting that Continental buy Bon Ton's trucks and take Bon Ton's drivers on Continental's payroll. Pursuant to agreements dated March 16, 1966 (S.E. 18C, 18D, 19, 20), Continental acquired Bon Ton's accounts receivable, route books, customer lists, trademarks, trucks, and all but approximately $1,800 of its bank account. At this time Mr. Stepanzoff and Bon Ton's drivers became employees of Continental. Stepanzoff became an employee of Continental at a salary of $200 per week (S.E. 18).

49. In consideration of the transfer Continental cancelled all outstanding invoices for products sold to Bon Ton. It also cancelled Stepanzoff's debt of $37,500 which was incurred when he received Continental's check of June 5, 1965, in that amount (S.E. 18).

Count II

50. The Wyoming Baking Company (d/b/a Bunny Bakery) (hereinafter referred to as "Wyoming Baking") was at all times pertinent to this proceeding a Wyoming corporation with its principal office and place of business in Casper, Wyoming.

51. In 1966 the corporation was owned, except for certain qualifying shares, by its president, Mr. Eugene Sneesby. He controlled the policies of the company and was in sole charge of its operations.

52. For a number of years prior to April 19, 1966, Wyoming Baking had been engaged in the production and sale of bakery products, including bread and bread-type rolls.

53. The bakery products produced by Wyoming Baking, including its bread and bread-type rolls, were sold by it to a variety of customers over some 17 routes in Wyoming. These routes were in or near Casper, Riverton, Rawlins, Sheridan, Edgerton, Thermopolis, Douglas, Midwest, Landes, Buffalo and Glenrock.

54. For many years prior to 1966, Wyoming Baking also sold and distributed to the customers on its several routes Continental's Hostess-labelled cake products and at least one bread variety produced by Continental and bearing Continental's Wonder label.

55. During 1964, Wyoming Baking had total sales of approximately $1,004,807 and during 1965 total sales of $968,134. Bread and bread-type rolls accounted for about 70 percent of the 1964 and 1965 total sales.

56. As a distributor of Continental's Hostess cakes Sneesby had occasion to be in contact from time to time with Mr. Herbert Van Wyk, manager of Continental's Denver plant. At a meeting between the two in November 1965, Van Wyk suggested that Wyoming Baking might terminate its production of bread, bread-type rolls and other bakery products and become a distributor of Continental's entire line. Sneesby was not interested in becoming a distributor of Continental's bread, however, and felt that if Continental was interested in the territory he served they would either have to buy him out or run him out.

57. During December 1965 and January 1966 Van Wyk and Sneesby discussed further the possibility of Wyoming Baking's discontinuing production and becoming a distributor of Continental's entire line. At this time Van Wyk told Sneesby that Continental was not in a position to buy a bakery producing bread and bread-type rolls but it could buy the routes of such a bakery if there was no production connected with them. Sneesby has testified that he was unwilling to limit his profit potential by discontinuing production without receiving some money for his routes. Sneesby had a debt of about $80,000 as the remaining balance on the indebtedness he had incurred in modernizing his plant a few years before. While he was not being pressed for payment and said he was not obliged to meet any current loan payments, he felt almost $100,000 would be necessary to pay off his debt. Sneesby had a cash balance in the bank of approximately $130,000 at this time (S.E. 20, p. 57).

58. The discussion between Van Wyk and Sneesby during December 1965 and January 1966 progressed to such

an extent that in February 1966 Van Wyk forwarded to Mr. Gordon Thomas, one of Continental's attorneys, a copy of an "Outline" relating to Bunny Bakery (Wyoming Baking) which contained a detailed plan prepared by Van Wyk for taking over Sneesby's operation. (S.E. 20, pp. 136-140).[7] This plan included provision for purchase at cost of all of Sneesby's inventory, for two loans to Sneesby, each of $50,000, and for the outright purchase by Continental of Sneesby's business after about sixty days of its operation as a distributorship with a covenant by Sneesby not to compete for five years thereafter. On Mr. Thomas' copy of Van Wyk's plan there is marked "No" opposite the proposal re inventory; "No" opposite the proposal for two interest free loans; "Absolutely out" opposite the proposal for acquisition of Sneesby's operation; and "No" opposite the proposal for a covenant not to compete (S.E. 20, p. 140). If called to testify Mr. Thomas would state that these margin notes were made by him at the time of his receipt of Van Wyk's plan.

59. In March of 1966 Thomas, Ralph Ward, Continental's regional vice-president, and Van Wyk, met with Sneesby in Casper to discuss the possibility of an arrangement between Wyoming Baking and Continental.

60. At the meetings in March 1966, the parties discussed the terms of a proposed sales agreement pursuant to which Continental would sell and Wyoming Baking would buy for resale Continental's bread and bread-type rolls. Those present at the meetings are uncertain as to the details of the discussions but Thomas and Sneesby agree that Thomas told Sneesby that Continental could not buy any part of the stock and assets of Wyoming

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[7] S.E. 20 is the file of Gordon Thomas relating to the Wyoming Baking Company transactions. During the period of time covered by this file Gordon Thomas was Associate Counsel of Continental Baking. S.E. 21 is the file of O.D. Stevens, Credit Manager of Continental Baking Company relating to transactions with Wyoming Baking. These files have been paginated for purposes of more ready reference.

Baking. (Sneesby, I.H., p. 71) [5] Ward, Sneesby and Van Wyk agree that there was a discussion of the transfer to Continental of Wyoming Baking's inventory of wrapping supplies for future sales of Bunny-labeled products to the distributorship. Neither Ward nor Thomas recall any discussion of a loan to Sneesby and Sneesby himself has no recollection of such a discussion. All parties agree that Thomas was to draft a sales agreement for presentation to Sneesby and Thomas made some notes at the time on the subjects to be covered (S.E. 20, pp. 120-121).

61. Using the notes made at the March meetings and following to some extent the form used in the Bon Ton sales agreement, Thomas drafted a sales agreement which on April 4, 1966 was sent to Van Wyk for consideration and possible presentation to Sneesby (S.E. 20, p. 122-131, 107-120, 104-107).

62. The sales agreement drafted by Thomas was slightly altered by Van Wyk (S.E. 20, p. 106). Thomas approved these alterations and the sales agreement was then presented to Sneesby and executed by him on April 19, 1966 (S.E. 22). Thereafter it was executed on behalf of Continental in New York by Mr. Whammond, Treasurer (S.E. 20, pp. 92-103).

63. The sales agreement reflected the understanding of Continental and Wyoming Baking that Wyoming Baking would discontinue production of bakery products, including bread and bread-type rolls, and become a full line distributor of Continental's products. Performance was to be consummated as soon as possible after execution and in any event within sixty (60) days of the contract date (S.E. 22).

64. The sales agreement provided Wyoming Baking with an exclusive distributorship in those parts of Wyoming Baking's territory where Continental had not distributed bread and bread-type rolls before April 19, 1966. In one area of south-central Wyoming (Rawlins) which

[5] "I.H." refers to a Commission Investigational Hearing. These hearings are authorized by statute and the rules of the Commission. Notice of these hearings were not given to Continental and such is not required by statute or rule.

was already being served by a Continental distributor, Wyoming Baking was given a non-exclusive distributorship (S.E. 22).

65. The sales agreement also contained a covenant that in event of a termination of the agreement and the exercise by Continental of the option to purchase provided for in the agreement Wyoming Baking would not compete with Continental in the sale of products similar to those covered by the agreement in the territory covered by the agreement for a period of five years (S.E. 22).

66. Additionally, under the sales agreement Wyoming Baking was required to sell in the territory alloted to it (which was the area previously served by Wyoming Baking) only the products carried by Continental in its line and to obtain all of its requirements of such products from Continental. To sell any other products Wyoming Baking had to obtain prior written approval from Continental (S.E. 22). Such approval was never refused and was granted as to one product. (Sneesby, I.H. p. 92.)

67. The sales agreement also provided Continental with an option to purchase the dealership under certain circumstances at a price of $170,000 in the event of Sneesby's death or termination of the agreement pursuant to the provisions for renewal (S.E. 22). Sneesby has testified that this provision was included at his insistence. (Sneesby, I.H. p. 48.) The option was never exercised.

68. If called to testify Sneesby would testify that contemporaneous with the written sales agreement, Van Wyk stated to Sneesby that: (1) Continental would exercise its option to purchase the distributorship within a year or two after the signing of the sales agreement; (2) Continental would make two interest free loans to Sneesby of $50,000 each and that these loans would be set off against the $170,000 option purchase price; (3) Sneesby, in the operation of the distributorship, would earn at least 3 per cent net return on sales (Sneesby, Dep. pp. 13, 14, 19). Sneesby would also testify that Van Wyk did not make these statements in the presence of any other Continental officer or employee. However Sneesby would testify that the statements as to purchases and loan were made in the presence of Mr. Brown, his attorney, and

Mr. Chapin, the secretary of Wyoming Baking (Sneesby, Dep. p. 20; Sneesby, I.H., pp. 68-69). Sneesby would also testify that the guarantee profit discussion was strictly between himself and Van Wyk, and that Van Wyk later denied ever having made such an agreement (Sneesby, I.H., pp. 64, 68-69). Finally, Sneesby has testified that Van Wyk promised to hire Wyoming Baking's production personnel, but that he never did so. (Sneesby, I.H. pp. 58-59.)

69. Wyoming Baking ceased production of bakery products including bread an bread-type rolls on the weekend of June 10, 1966, and on the following Monday, June 13, 1966, commenced distribution of bread, bread-type rolls and other bakery products produced at Continental's Denver plant.

70. On and after June 13, 1966, Wyoming Baking sold and distributed the products produced at Continental's Denver, Colorado plant over the same routes and to the same customers and in substantially the same quantities as it had sold and distributed similar products produced at its own plant prior to that date.

Sneesby has testified that as a distributor of Continental's products Wyoming Baking operated as an independent corporation, and that management, hiring, firing, promotion of business and the like were still his prerogatives (Sneesby, I.H. pp. 13, 86-87).

71. At the time of the changeover Wyoming Baking had an inventory of "Bunny" labeled packaging material (*i.e.*, Wyoming Baking material). This material was transferred to Continental's Denver plant on May 17, 1966 (S.E. 20, p. 75) and for a period of time between June 13, 1966, and September, 1966, Continental supplied the distributorship with certain bakery products, including bread and bread-type rolls wrapped in this packaging material carrying the "Bunny" trademark which had been used by Wyoming Baking when it was in production. After September, 1966, "Bunny" labeled products were gradually phased out and thereafter most bakery products, including bread and bread-type rolls, sold to this distributor carried Continental's labels or were, to a very limited extent, products obtained by

Continental from other producers (and bearing the labels of such other producers) but sold and distributed by Continental to outlets it served such as the distributor Wyoming Baking (S.E. 20, p. 68).

72. To compensate Wyoming Baking for the inventory of "Bunny" packaging used by Continental, a discount off Continental's invoices to Wyoming Baking was allowed during the period after June 13, 1966, until the packaging material was no longer being used by Continental. These discounts amounted to $11,634 (S.E. 20, pp. 39, 75).

73. Also transferred from Wyoming Baking to Continental were: bulk bun cartons for $401.29, and bread pans for $475.00. The bulk bun cartons and bread pans were paid for by a check from Continental for $876.29 (S.E. 20, pp. 16-17). The amount paid for the bread pans was described as "negligible" by Sneesby and a Commission attorney (Sneesby, I.H. p. 81).

74. In regard to Continental's use of and payment for these supplies Van Wyk stated to Ward that Thomas had advised him that there was no legal problem so long as payment was not made until after June 13, 1966, when Wyoming Baking would be out of production (S.E. 20, p. 75).

75. Sometime in July 1966 Sneesby requested of Van Wyk the first $50,000 interest-free loan that Sneesby asserts Van Wyk had promised him at the time of the execution of the sales agreement. Van Wyk checked this request with Thomas in New York, was told there could be no loan to Sneesby, and thereupon informed Sneesby there could be no loan (S.E. 20, p. 64; Sneesby, I.H. 49-51).

76. When the cash loan was turned down Sneesby obtained the use of $50,000 by withholding payment on that amount of purchases, which was about three weeks' worth (Sneesby, I.H. p. 52). Continental's responsible officers—Ward, Thomas, and Mr. Stevens, who was Continental's Credit Manager—had no knowledge of any commitment to grant Sneesby a loan or credit for $50,000 worth of purchases, and they on numerous occasions instructed Van Wyk to bring Sneesby's credit in line

with the ten days' credit provided for in the sales agreement (S.E. 20, pp. 43, 48-51, 54-55; S.E. 21, pp. 5, 10, 12-15). When Sneesby and Van Wyk attempted to get the sales agreement amended to give Sneesby five weeks' credit, Continental's officers refused to sign such an amendment (S.E. 20, pp. 51, 55-62; S.E. 21, pp. 16-21). When Van Wyk wrote Sneesby in effect acquiescing in three weeks' credit he stated that "I certainly do not have approval for this." (S.E. 20, p. 54.)

77. Sneesby wrote Van Wyk on November 11, 1966 asking, inter alia, for an additional $50,000 loan which he was willing to take by way of additional credit if Van Wyk wanted it that way, since loans could not be made, so long as he [Sneesby] had written assurance that Continental would permit him to maintain a debit balance of $100,000 (S.E. 23; 20, p. 45). On November 18, 1966 Van Wyk reviewed this letter with Sneesby at a conference in Casper and stated to him that there could be no further credit allowance (S.E. 20, pp. 46-47). On November 25, 1966 Sneesby's attorney, Brown, wrote Van Wyk protesting Van Wyk's denial of having made several promises to Sneesby and threatening legal action to reform the written contract and for damages (S.E. 20, p. 44).

78. Thomas met with Sneesby and Brown in January 1967. By letter of January 27, 1967 Thomas wrote to Sneesby's attorney covering the various points of their discussion. As to any commitment by Van Wyk that Continental would purchase Sneesby's distributorship, Thomas reported that if such a promise was made it was outside the scope of Van Wyk's authority, and stated that under no circumstances was Continental legally in a position to purchase Sneesby's business. Thomas' letter further recorded a suggestion made by Thomas that Continental might be able to find someone interested in purchasing the distributorship from Sneesby and operating it in the future as an independent economic entity. Thomas stated that if Continental could not find such a purchaser it would apply to the Commission for permission to acquire Sneesby's distributorship (S.E. 20, pp. 34-37).

79. In February of 1967 Messrs. Ralph and Don Wheelwright of Boise, Idaho (doing business as "Wheelwright Brothers" and hereinafter referred to as such) were then distributors of Continental's products in the Boise, Idaho area. They were contacted by Continental's Ogden, Utah, plant manager, Mr. Lyle Worthington, and he informed them of Sneesby's willingness to sell the distributorship.

80. On March 10, 1967, one of Continental's attorneys called at the offices of responsible Commission personnel and reported, in essence, that Continental's present distributor in Casper (Wyoming Baking) wanted to sell out, that Continental had found a possible buyer by the name of Wheelwright, and that if the Wheelwrights did buy, Continental would probably have to guarantee any loans they secured. Continental's attorney stated that he "was not asking for any prior approval" but added that "if you [Commission staff] did have any opinion on the subject" he "would of course be interested to hear them." (S.E. 24A.) The Commission attorneys on the same date advised Continental's attorneys that:

> . . . we are continuing our inquiry, initiated sometime ago, with respect to the arrangements entered into between Continental Baking Company and Mr. Sneesby and Wyoming Baking Company. We accordingly express no opinion as to the legal propriety of any future negotiations as they may relate to the Docket 7880 order. (S.E. 24.)

From that date until the filing of the complaint in this case no one connected with the Commission ever expressed to Continental the opinion that the Wheelwright transaction was in any way unlawful or in violation of the consent order.

81. The Wheelwright Brothers visited Casper and examined Sneesby's plant and business. They decided to acquire the distributorship, and contacted Ward. Ward informed them that Continental had no objections to their purchase of Sneesby's distributorship.

82. In order to effect the purchase the Wheelwright Brothers secured two bank loans. The first, in the

amount of $15,000, was obtained from the First National Bank in Boise, the second, for $110,000, from the Wyoming National Bank of Casper.

83. The Wheelwright Brothers were aware that they would be unable to obtain a loan as large as $100,000 without some additional security. Ward told them that Continental would guarantee the $110,000 note and in fact did so.

84. As of April 1, 1967 the Wyoming Baking distributorship was transferred to the Wheelwright Brothers in consideration of the payment by them to Wyoming Baking of $125,000 (S.E. 25, 26).

85. Another agreement (S.E. 27) was entered into at this time (dated March 28, 1967) between Wyoming Baking and Continental which acknowledged the payment to Continental by Wyoming Baking of the sum of $57,809.23. This sum represented the money Wyoming Baking owed Continental for purchases of merchandise received (Sneesby, I.H. p. 82). Although no interest was charged on any part of this indebtedness, defendant's responsible officials, if called to testify, would state that interest is not customarily charged in settling debts on delinquent accounts.

This agreement also recited a release and discharge on the part of both parties from any and all obligations which had theretofore arisen or might arise under the said contract of April 19, 1966, including any and all oral agreements made between the parties with reference to such contract (S.E. 28).

86. Sneesby realized out of the sale to the Wheelwrights $125,000 less the $57,809.23 paid to Continental for his prior trade purchases. His willingness to take an amount considerably less than the $170,000 purchase price he quoted in early 1966 was explained by Sneesby as being "the best arrangement that I could make and if I made any mistakes in understanding and so forth, maybe this was the way to go on it instead of try to fight it, argue about it, for a great period of time and wonder how it might come out." (Sneesby, I.H. p. 56).

87. On April 3, 1967 the Wheelwright Brothers began operating the distributorship and selling and distributing Continental labeled products over the routes and to the customers that had been served by Wyoming Baking until April 1, 1967.

88. After about one year, the Wheelwright Brothers found that because of diminishing sales and other problems they were behind in their payments to Continental and financially indebted to the company.

89. The Wheelwright Brothers informed Continental of their desire to get out of the "Casper" business. An agreement was then entered into between Continental and the Wheelwright Brothers as a result of which Continental acquired the Casper distributorship in consideration of the cancellation of the Wheelwright's debts and the payment to them of the $15,000 in cash invested by them in the distributorship at the time of purchase from Sneesby.

Count III

90. The Sheppard Baking Company (hereinafter sometimes referred to as "Sheppard") was at all times pertinent a Colorado corporation with its principal office and place of business in Durango, Colorado.

91. The company was incorporated about 1963. At all times pertinent hereto Mr. Melvin C. Hebert operated the business and owned a majority stock interest in it.

92. For many years prior to August 1966 Sheppard baked bread and bread-type rolls at its Durango plant.

93. The bakery products produced by Sheppard were distributed and sold at wholesale to customers located along four routes in southwestern Colorado. Two of these routes were in and around Durango, Hesperus, and Vallecito; one was in the Cortez area; and one in the Pagosa Spring area.

94. For many years prior to August 1966 Sheppard had also sold and distributed Continental's Hostess-labeled cakes to customers serviced on its routes, as well as cakes and potato chips produced by other companies.

95. For the fiscal year ending June 30, 1965 Sheppard had total sales of $202,706 and for the fiscal year ending June 30, 1966 total sales of $220,057.

96. The sale of bread and bread-type rolls accounted for about 75 per cent of Sheppard's total sales volume.

97. Business difficulties in 1964 and 1965 promoted Hebert to initiate efforts to sell the company. He first approached J. C. Patterson Company and Mead Baking Company, without success in either case.

98. About May 1966 Hebert entered into discussions with Van Wyk about becoming a distributor of Continental's bread and bread-type rolls in addition to its cake products.

99. A sales agreement (S.E. 30) was entered into between Continental and Sheppard in August 1966. This agreement provided that Continental would sell and Sheppard would buy for resale Continental's bread and bread-type rolls and established Sheppard as a distributor of these products. It was Continental's and Sheppard's understanding that Sheppard would cease production of bread and bread-type rolls before it became a distributor of Continental's bread and bread-type rolls.

100. It was also Continental's and Sheppard's understanding that initially most of the bread and bread-type rolls produced by Continental for the Sheppard distributorship would carry Sheppard labels and be sold and distributed by Sheppard over the routes and to the customers it had served while in production, and that eventually the Sheppard labeled bread and bread-type rolls would be phased out and replaced by Continental labeled bread and bread-type rolls.

101. Prior to August 1966 Continental had no distribution of bread and bread-type rolls in the area of Colorado served by Sheppard. Under the terms of the sales agreement Sheppard was given an exclusive dealership in this territory.

102. Under the sales agreement Sheppard was required to sell in the territory alloted to it (which was the area served by Sheppard) only the products carried by Continental in its line and to obtain all its requirements of such products from Continental. To sell any other products the dealer had to obtain prior written approval from Continental (S.E. 30). This approval was never

refused, and was requested with respect to two products and given (S.E. 31; Hebert, Dep. pp. 5-6).

103. Sheppard ceased production of bread and bread-type rolls on a weekend in mid-October, 1966 and on the following Monday commenced distribution of bread and bread-type rolls produced at Continental's Denver plant.

104. After the termination of its production in mid-October, 1966 Sheppard sold and distributed products produced at Continental's Denver plant over the same routes to the same customers and in substantially the same quantities as it had sold and distributed similar products produced at its own plant prior to that date.

105. At the time of the changeover Sheppard had an inventory of Sheppard labeled packaging material. This material was transferred to Continental's Denver plant and for a period of time Continental supplied the distributorship with bread and bread-type rolls wrapped in this packaging material which had been used by Sheppard when it was in production. After a period of time Sheppard labeled products were gradually phased out and thereafter most bread and bread-type rolls sold to this distributor carried Continental's labels.

106. After Sheppard became a distributor of Continental's bread and bread-type rolls the business was operated by Hebert as an independent distributor of Continental products pursuant to the provisions of the sales agreement (S.E. 30). Hebert testified that Continental had nothing to do with any of Sheppard's management decisions and that he believed the company was as independent as it had been prior to June 1966. (Hebert, Dep. pp. 17-18).

Commission Investigation

107. Upon the basis of information brought to its attention by third party and internal sources, the staff of the Commission commenced an investigation in July 1966 involving certain of the operations of Continental as they related to the provisions of the Commission's consent order. This inquiry continued until July 10,

1968, at which time the staff formally reported to the Commission with respect to the results of such investigation and recommended that the Commission certify a civil penalty action to the Attorney General based upon the factual situations set forth in counts 1, 2 and 3 of the present complaint.

As part of the staff's inquiry, Continental was from time to time requested to supply information as reflected in various of the exhibits constituting attachments to the stipulation. The final request for information directed to Continental itself by the Commission's staff was on May 12, 1967 (S.E. 19). Two investigational hearings were conducted, one on May 2, 1967 (Sneesby, I.H.) and one on May 16, 1967 (Hebert, I.H.).

At no time prior to the filing of the complaint did the Commission notify Continental or ITT Continental that it had concluded that Continental's arrangements with Bon Ton, Wyoming Baking or Sheppard violated the Commission's consent order against Continental, nor did it ever advise Continental or ITT Continental that the Commission was of the opinion that Continental or ITT Continental had not complied with that consent order.

108. In April 1966 the Commission staff learned of a transaction between Continental and the Mack Baking Company of Bangor, Maine. The Commission staff made several limited inquiries into the matter, including a letter of inquiry to Continental dated May 24, 1966 (S.E. 34), to which it received a reply in June 1966 (S.E. 34A). The Commission made no decision to challenge the transaction as constituting a violation of the consent order. Continental made no application to the Commission for approval of the transaction nor did the Commission ever express approval or disapproval of the transaction.

Certification to the Attorney General

109. On August 2, 1968, pursuant to the provisions of Section 16 of the Federal Trade Commission Act, the Federal Trade Commission certified to the Attorney

General of the United States the facts constituting its reasons for believing that violations of the consent order had occurred. (S.E. 36.) The Commission recommended that the Atorney General institute appropriate proceedings for the recovery of civil penalties, as provided for in Section 11(1) of the Clayton Act and Section 5(1) of the Federal Trade Commission Act, and certain injunctive relief.

Exhibits

The parties hereto stipulate and agree that the exhibits attached hereto and made a part hereof are authentic, but expressly reserve the right to argue as to the relevancy and materiality of any document or part thereof and as to significance and weight to be attached to any statement therein.

S.E. 1 Continental Baking Company, Annual Report, 1966.

S.E. 2 ITT Continental Baking Company Prospectus, June 25, 1970.

S.E. 3 Continental Baking Company "Notice of Special Meeting to Stockholders", dated August 6, 1968.

S.E. 4 Federal Trade Commission Complaint dated May 5, 1960.

S.E. 5 "Agreement Containing Consent Order to Divest and to Cease and Desist" In The Matter of Continental Baking Company, Docket No. 7880, dated March 28, 1962.

S.E. 6 Initial Decision and Order of Hearing Examiner dated April 2, 1962.

S.E. 7 Decision and Order of Federal Trade Commission dated May 11, 1962.

S.E. 8 Letter, dated December 15, 1965, from Roy M. Anderson, Vice President and General Counsel, Continental Baking Company to Joseph W. Shea, Secretary, Federal Trade Commission.

S.E. 8A Letter, dated May 24, 1966 from Joseph W. Shea, Secretary, Federal Trade Commission, to Roy M. Anderson, Vice President and General Counsel, Continental Baking Company.

S.E. 9 Letter, dated March 30, 1967 from John H. Schafer, Covington & Burling, attorney for Continental Baking Company, to Joseph J. Gercke, Chief, Compliance Division, Bureau of Restraint of Trade, Federal Trade Commission.

S.E. 9A Letter, dated April 18, 1967, from Joseph W. Shea, Secretary, Federal Trade Commission, to John H. Schafer, Covington & Burling.

S.E. 10 Letter, dated September 20, 1967, from John H. Schafer, Covington & Burling, to Lars Janson, Attorney, Compliance Division, Bureau of Restraint of Trade, Federal Trade Commission.

S.E. 10A Letter, dated September 29, 1967, from Joseph W. Shea, Secretary, Federal Trade Commission, to John H. Schafer, Covington & Burling.

S.E. 11 Letter, dated November 24, 1967, from John H. Schafer, Covington & Burling, to Lars Janson, Attorney, Compliance Division, Bureau of Restraint of Trade, Federal Trade Commission.

S.E. 11A Letter, dated January 2, 1968 from Joseph W. Shea, Secretary, Federal Trade Commission, to John H. Schafer, Covington & Burling.

S.E. 12 Letter, dated May 14, 1968 from Roy M. Anderson, Vice President and General Counsel, Continental Baking Company, to Joseph J. Gercke, Chief, Compliance Division, Bureau of Restraint of Trade, Federal Trade Commission.

S.E. 12A Letter, dated June 10, 1968 from Joseph W. Shea, Secretary, Federal Trade Commission to John H. Schafer, Covington & Burling.

S.E. 13 Letter, dated November 4, 1968 from Roy M. Anderson, Vice President and General Counsel, Continental Baking Company, to Joseph J. Gercke, Chief, Compliance Division, Bureau of Restraint of Trade, Federal Trade Commission.

S.E. 13A Letter, dated December 23, 1968 from Joseph W. Shea, Secretary, Federal Trade Commission, to Roy M. Anderson, Vice President and General Counsel, Continental Baking Company.

S.E. 14 Letter, dated January 16, 1969 from John H. Schafer, Covington & Burling, to Joseph W. Shea, Secretary, Federal Trade Commission.

S.E. 14A Letter, dated May 2, 1969 from Joseph W. Shea, Secretary, Federal Trade Commission, to John H. Schafer, Covington & Burling.

S.E. 15 Letter, dated October 17, 1969 from Gordon A. Thomas, Associate Counsel, ITT Continental Baking Company, Inc., to Joseph J. Gercke, Chief, Compliance Division, Bureau of Restraint of Trade, Federal Trade Commission.

S.E. 15A Letter, dated December 24, 1969 from Joseph W. Shea, Secretary, Federal Trade Commission, to Gordon A. Thomas, Associate Counsel, ITT Continental Baking Company.

S.E. 16 Letter, dated November 7, 1969 from Gordon A. Thomas, Associate Counsel, ITT Continental Baking Company, to Joseph J. Gercke, Chief, Compliance Division, Bureau of Restraint of Trade, Federal Trade Commission.

S.E. 16A Letter, dated March 26, 1970, from Joseph W. Shea, Secretary, Federal Trade Commission, to Gordon A. Thomas, Associate Counsel, ITT Continental Baking Company.

S.E. 17 Letter, dated January 30, 1970, from Gordon A. Thomas, Associate Counsel, ITT Continental Baking Company, to Joseph J. Gercke, Chief, Compliance Division, Bureau of Restraint of Trade, Federal Trade Commission.

S.E. 17A Letter, dated April 27, 1970, from Joseph W. Shea, Secretary, Federal Trade Commission, to Gordon A. Thomas, Associate Counsel, ITT Continental Baking Company.

S.E. 18 Letter, dated April 10, 1967 from Roy M. Anderson, Vice President and General Counsel, ITT Continental Baking Company, to Carl J. Batter, Jr., Attorney, Compliance Division, Bureau of Restraint of Trade, Federal Trade Commission.

S.E. 18A Continental Baking Co.—Bon Ton, Inc., Hostess Cakes Dealership Agreement, April 23, 1953, submitted as enclosure to Anderson letter of April 10, 1967 (S.E. 18).

S.E. 18B "Sales Agreement, Independent Dealer" for Wonder Bread, between Continental Baking Company and Alex Stepanzoff, dated May 1965.

S.E. 18C Indenture of Lease between Continental Baking Company and Bon Ton dated March 16, 1966.

S.E. 18D Agreement providing for assignment of accounts receivable and labor contract by Bon Ton, Inc., to Continental Baking Company dated March 16, 1966.

S.E. 18E Memorandum of Agreement made and entered into on March 16, 1966 between Continental and Bon Ton.

S.E. 18F Letter, dated April 8, 1967 from Alex Stepanzoff to Roy M. Anderson, Vice President and General Counsel, Continental Baking Company.

S.E. 18G "Schedule 2, Record of Gross Sales by Weeks to Bon Ton * Missoula, Montana, from 7-5-1965 to 3-26-66."

S.E. 19 Letter, dated June 27, 1967 from Roy M. Anderson, Vice President and General Counsel, Continental Baking Company to Carl J. Batter, Jr., Compliance Division, Bureau of Restraint of Trade, Federal Trade Commission.

S.E. 19A Bon Ton, Inc., of Missoula Year-End Report, 1963.

S.E. 19B Bon Ton, Inc., of Missoula Year-End Report, 1964.

S.E. 19C Continental Baking Company check dated June 5, 1965 for $37,500 to the order of Alex Stepanzoff.

S.E. 20 File of Gordon A. Thomas, Associate Counsel, ITT Continental Baking Company, relating to the Wyoming Baking Company.

S.E. 21 File of O. D. Stevens, Credit Manager, ITT Continental Baking Company, relating to the Wyoming Baking Company.

S.E. 22 "Sales Agreement, Independent Dealer" dated April 19, 1966 between Continental Baking Company and Wyoming Baking Company.

S.E. 22A Letter, dated October 18, 1966, from Gordon Thomas, Associate Counsel, Continental Baking Company to Carl J. Batter, Jr., Attorney, Compliance Division, Bureau of Restraint of Trade, Federal Trade Commission (with map referred to in S.E. 22).

S.E. 23 Letter, dated November 11, 1966, from Eugene Sneesby, Wyoming Baking Company, to Hebert Van Wyk, manager, of Continental Baking Company's Denver plant.

S.E. 24 Letter, dated March 10, 1967, from Joseph J. Gercke, Chief, Compliance Division, Bureau of Restraint of Trade, Federal Trade Commission to John H. Schafer, Covington & Burling.

S.E. 24A Letter, dated March 10, 1967, from John H. Schafer, Attorney for Continental Baking Company to Joseph J. Gercke, Chief, Compliance Division, Bureau of Restraint of Trade, Federal Trade Commission.

S.E. 25 "Agreement" dated March 28, 1967, between Wyoming Baking Company to Wheelwright Brothers.

S.E. 26 "Bill of Sale," dated April 1, 1967, from Wyoming Baking Company and Wheelwright Brothers.

S.E. 27 Consulting Agreement, dated March 28, 1967, between Eugene Sneesby and the Wheelwright Brothers.

S.E. 28 "Agreement", dated March 28, 1967, between Continental Baking Company and Wyoming Baking.

S.E. 29 Lease Agreement, dated March 28, 1967, between Wyoming Baking Company and Wheelwright Brothers.

S.E. 30 "Sales Agreement, Independent Dealer," dated August 1966, between Continental Baking Company and Sheppard Baking Company.

S.E. 31 Letter, dated September 12, 1966, from Continental Baking Company to Melvin Hebert, Sheppard Baking Company.

S.E. 32 Sheppard Baking Company's balance sheet and profit and loss statement for fiscal years ending June 30, 1964, 1965 and 1966.

S.E. 33 Letter, dated January 3, 1967, from Roy M. Anderson, Vice President and General Counsel, Continental Baking Company, to Joseph J. Gercke, Chief, Compliance Division, Bureau of Restraint of Trade, Federal Trade Commission.

S.E. 33A Letter dated January 11, 1966, from Carl J. Batter, Jr., Attorney, Compliance Division, Bureau of Restraint of Trade, Federal Trade Commission, to William J. Whammond, Secretary, Continental Baking Company.

S.E. 34 Letter, dated May 24, 1966, from Joseph J. Gercke, Chief, Compliance Division, Bureau of Restraint of Trade, Federal Trade Commission, to William J. Whammond, Secretary, Continental Baking Company.

S.E. 34A Letter, dated January 3, 1966, from William J. Whammond, Secretary, Continental Baking Company, to Joseph J. Gercke, Chief, Compliance Division, Bureau of Restraint of Trade, Federal Trade Commission.

S.E. 34B Letter, dated June 30, 1966, from Carl J. Batter, Jr., Attorney, Compliance Division, Bureau of Restraint of Trade, Federal Trade Commission, to William J. Whammond, Secretary, Continental Baking Company.

S.E. 35 Letter, dated January 3, 1967, from Roy M. Anderson, Vice President and General Counsel, Continental Baking Company, to Joseph J. Gercke, Chief, Compliance Division, Bureau of Restraint of Trade, Federal Trade Commission.

S.E. 36 Letter, dated August 2, 1968, from Paul Rand Dixon, Chairman, Federal Trade Commission to Ramsey Clark, Attorney General.

S.E. 36A Letter, dated August 14, 1968, from Edwin M. Zimmerman, Assistant Attorney General, Antitrust Division, to Paul Rand Dixon, Chairman, Federal Trade Commission.

Transcripts of Investigational Hearings

Sneesby, Investigational Hearing (I.H.) —Eugene Sneesby, transcript of investigational hearing, on May 2, 1967. Exhibits from this hearing correspond to the Stipulation Exhibits as follows:

Exhibit 1 — S.E. 27
Exhibit 2 — S.E. 25
Exhibit 3 — S.E. 26
Exhibit 4 — S.E. 28
Exhibit 5 — S.E. 29
Exhibit 6 — S.E. 23

Hebert, Investigational Hearing (I.H.) —Melvin C. Hebert, transcript of investigational hearings, on May 16, 1967. Exhibits from this hearing correspond to the Stipulation Exhibits as follows:

Exhibit A — S.E. 30
Exhibit B — S.E. 31
Exhibit C — S.E. 32
Exhibit D — S.E. 32
Exhibit E — S.E. 32

Interrogatories

Defendants Interrogatories filed April 1, 1969.

Plaintiffs Answers to Interrogatories, filed May 1, 1969.

Plaintiffs Further Answers to Interrogatories, filed April 6, 1970.

Exhibits to Plaintiffs Answers Correspond to the Stipulation Exhibits as Follows:

Exhibit 1 — S.E. 18D
Exhibit 2 — S.E. 18E
Exhibit 3 — S.E. 18C
Exhibit 4 — S.E. 18F
Exhibit 5 — S.E. 18
Exhibit 6 — S.E. 18B
Exhibit 7 — S.E. 19
Exhibit 8 — S.E. 22
Exhibit 9 — S.E. 22A
Exhibit 10 — S.E. 33
Exhibit 11 — S.E. 24A
Exhibit 12 — S.E. 27
Exhibit 13 — S.E. 25
Exhibit 14 — S.E. 26

Sneesby, Deposition (Dep.) —Eugene Sneesby, transcript of deposition, on June 23, 1970. Exhibits from this deposition correspond to the Stipulation Exhibits as follows:

Exhibit 8 — S.E. 22
Exhibit 12 — S.E. 27
Exhibit 13 — S.E. 25
Exhibit 14 — S.E. 26
Exhibit 15 — S.E. 28
Exhibit 16 — S.E. 29
Exhibit 17 — S.E. 23

Hebert, Deposition (Dep.) —Melvin C. Hebert, transcript of deposition, on June 24, 1970. Exhibits from this deposition correspond to the Stipulation Exhibits as follows:

Exhibit 19 — S.E. 30
Exhibit 20 — S.E. 20

R. Wheelwright, Deposition (Dep.) —Ralph Wheelwright, transcript of deposition, on June 24, 1970.

D. Wheelwright, Deposition (Dep.) —Don Wheelwright, transcript of deposition, on June 24, 1970.

/s/ James E. Corkey
Of Counsel

/s/ John H. Shafer
Of Counsel

Dated: December 1, 1970
Approved:

Dated: December 1, 1970

/s/ Carolyn J. McNeill
Attorney for Plaintiff

/s/ [Illegible]
Attorney for Defendant

/s/ Hatfield Chilson
HATFIELD CHILSON
U.S. District Judge

STIPULATION EXHIBIT 4

571 0670

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Docket No. 7880

In the Matter of

CONTINENTAL BAKING COMPANY,
a corporation.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondent has violated and is now violating the provisions of Section 7 of the amended Clayton Act (15 U.S.C. Section 18) and Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint charging as follows:

COUNT I

PARAGRAPH ONE: Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at Rye, New York.

Respondent is engaged in the business of manufacturing, distributing and selling bread and other bakery products. Its products are sold primarily under the trade name of "Wonder" for bread and "Hostess" for cakes. Respondent is the largest commercial baker of white bread, and one of the largest bakers of cake in the United States. Its total sales during the year 1957 exceeded $307,000,000.

Respondent's products are baked by some 86 plants located in approximately 64 cities in 29 states and the District of Columbia, and are distributed by approximately 333 agencies and depots throughout a 44 state

system. The daily production of each bakery of the respondent is distrbuted to grocery stores, restaurants, institutions, and other users, by approximately 5000 driver-salesmen operating light delivery trucks on about 4500 regularly established routes.

PARAGRAPH TWO: Sales of bread and bread-type rolls are made from each of respondent's bread plants throughout an effective area of distribution of several hundred miles from each plant. This radius is governed by the distance each plant can economically ship its products. Within this effective area of distribution, each plant encounters competition from local independent bakers and other plants of national bakers.

For example, typical of the trade areas in which respondent operates is the Omaha, Nebraska, trade area. In this trade area, respondent operates a bakery plant that ships fresh bread and bread-type rolls within its marketing or distributional area. Within this trade area of its Omaha plant, respondent encounters competition in the distribution and sale of bread and bread-type rolls from local independent wholesale bakeries and plants of other competing national bakeries.

PARAGRAPH THREE: In the course and conduct of its business, respondent ships bread and bread-type rolls directly from its bakeries to the purchasers thereof, some of whom are located in states other than those from which such shipments originate. Further, respondent ships bread and bread-type rolls from its bakery to sales depots or loading stations some of which are located in states other than those from which such shipments originate, for the purpose of having such products reshipped to its purchasers, some of whom are located in states other than those from which re-shipments are made.

Further, in the course and conduct of its business, respondent carries on negotiations across state lines with some of its customers for the sale of its products. As part of such negotiations, adjustments of accounts between respondent and some of its customers regularly take place across state lines.

Advertising of respondent's products, on both a national and local scale, is prepared and placed in various advertising media by respondent, or under its direction and control, from its headquarters at Rye, New York.

In the regular course and conduct of its business from its headquarters, respondent purchases various raw materials for the manufacture of its products as well as supplies, equipment and other needs for such manufacture and ships or causes to be shipped such items to its bakeries located in states other than those from which such shipments originated.

In the regular course and conduct of its business respondent maintains and controls, either directly from its headquarters or through its regional offices, activities of its bakeries located in the various states of the United States, such as:

1. The areas in which, and the prices at which, each bakery sells respondent's products;
2. The standard of production of all of its bakeries;
3. The nature and extent of most repairs to plants and equipment;
4. Personnel policies; and
5. Funds to be collected and dispersed by said bakeries.

In the exercise of such controls, there is maintained across state lines a steady flow of correspondence and other contacts between and among respondent's headquarters, regional offices, bakeries and sales depots.

By these methods, respondent maintains a course of trade in commerce, as "commerce" is defined in the amended Clayton Act and in the Federal Trade Commission Act, in bread and other bakery products, among and between the various states of the United States.

PARAGRAPH FOUR: Prior to the acquisition alleged herein, Omar, Inc., was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 1910 Harney Street, Omaha, Nebraska.

It was engaged in the manufacture, distribution and sale of bread and other bakery products, from plants

located at Omaha, Nebraska; Indianapolis, Indiana; Milwaukee, Wisconsin; and Columbus, Ohio. These products were shipped from the plants mentioned via trucks to approximately 50 branches or depots for further distribution throughout some 1500 routes in the States of Illinois, Indiana, Iowa, Wisconsin, Nebraska, and portions of the States of Missouri, Kentucky and West Virginia.

Total sales of Omar, Inc., during the year 1957 were approximately $40,000,000, which volume placed it among the ten largest commercial bakers in the United States.

PARAGRAPH FIVE: In the course and conduct of its business, Omar, Inc., shipped bread and bread-type rolls from its various bakery plants directly to its purchasers, some of whom were located in states other than those from which such shipments originated. It also shipped its products from its bakeries to sales depots or loading stations, some of which were located in states other than those in which such shipments originated, for regular reshipment to purchasers, some of whom were located in states other than those from which such reshipments were made.

Omar, Inc., carried on negotiations across state lines with some of its customers for the sale of its products, as well as for the adjustment of accounts between it and its customers.

Advertising of its products was prepared and placed in various advertising media by Omar, Inc., or under its direction and control, from its headquarters in Omaha, Nebraska.

In the regular course and conduct of its business from its headquarters, Omar purchased raw material for the manufacture of its products, as well as supplies, equipment and other needs, and shipped or caused to be shipped such items to its bakeries located in states other than those from which such shipments originated.

In the course and conduct of its business, Omar, Inc., maintained control over various activities of its different bakeries such as, for example:

1. The areas in which, and prices at which, each bakery was permitted to sell;

2. Standards of products to be maintained by said bakery;
3. The nature and extent of most repairs to plants and equipment;
4. Personnel policies; and
5. Funds to be collected and dispersed.

In the exercise of such controls, Omar, Inc., maintained across state lines a steady flow of correspondence and other contacts between and among its headquarters and its bakeries.

By such means, Omar, Inc., maintained a course of trade in commerce, as "commerce" is defined in the amended Clayton Act and in the Federal Trade Commission Act, in bread and other bakery products among and between the various states of the United States.

PARAGRAPH SIX: Since 1952 respondent has entered into a continuous practice of acquiring various bakeries throughout the United States, many of which, prior to their acquisition by respondent, had competed with respondent within the marketing areas of the acquired companies, and all of which prior to their acquisition by respondent were engaged in commerce, as "commerce" is defined in the amended Clayton Act and the Federal Trade Commission Act.

In 1952 respondent acquired Southern California Bakery Co., San Diego, California, thereby eliminating the largest independent local wholesale bakery in the San Diego market.

In December 1953 respondent acquired Smith Baking Co., Lincoln, Nebraska, eliminating this independent bakery as a competitive factor in the Lincoln market.

In December 1954 respondent acquired Royal Baking Co., Raleigh, North Carolina, thereby obtaining a bakery and 12 established distribution depots covering the distributional area of eastern North Carolina. This acquisition constitutes a market entry into this area by respondent.

In November 1955 respondent acquired Morton Packing Co., a manufacturer of frozen meat pies, frozen fruit pies, and other frozen food items from plants located at

Crozet, Virginia, and Webster City, Iowa, thereby obtaining a market entry in the line of commerce stated.

In April 1958 respondent acquired DiCarlo's National Bakery, Inc., San Pedro, California, thereby adding to its overall competitive strength in the lower California market area and eliminating one of the remaining competitive independent wholesale bakeries in that area.

Since the acquisition of Omar, Inc., respondent has acquired other bakeries in furtherance of its policy and practice of acquiring bakeries with some of which it had competed prior to such acquisition.

For example, in November 1958 respondent acquired Rochester Bread Company, Rochester, Minnesota, which operated 35 wholesale routes within a 100 mile radius of Rochester and was the largest independent wholesale bakery in the Rochester trade area.

Further, in December 1958 respondent acquired the Braun Baking Co., in Pittsburgh, Pennsylvania, which distributed bread and bakery products in 10 counties in western Pennsylvania. By this acquisition respondent has entered that market area in a strongly competitive position.

PARAGRAPH SEVEN: Prior to the Omar acquisition alleged herein, respondent competed with Omar, Inc., in the distribution and sale of bread and bread-type rolls in such distributional areas or sections of the country as Omaha, Nebraska; Indianapolis, Indiana; Milwaukee, Wisconsin; and Columbus, Ohio.

For example, prior to the acquisition herein alleged, in the Omaha, Nebraska, marketing or distributional area, or "section of the country", respondent was a leading factor in the supply of bread and bread-type rolls. In 1957 respondent accounted for approximately 10% of the total amount of bread and bread-type rolls marketed in this area. In this same year, Omar, Inc., accounted for approximately 17% of said total amount.

PARAGRAPH EIGHT: On or about November 29, 1958, the respondent acquired all of the assets of Omar, Inc., for approximately $5,217,850. Thereafter, Omar, Inc.,

became a wholly owned subsidiary of respondent, operating under the name of "Omar Bakery, Inc."

PARAGRAPH NINE: Respondent has violated Section 7 of the amended Clayton Act in that the acquisition of Omar, Inc., as well as the other acquisitions listed in Paragraph Six, either individually or collectively, may have the effect of substantially lessening competition or tending to create a monopoly in the respondent in the following ways, among others:

1. Respondent has become, actually or potentially, the leading and dominant supplier of bread and bread-type rolls within the "section of the country" of the Omaha, Nebraska, marketing or distributing area;
2. Respondent has become, actually or potentially the leading and dominant supplier of bread and bread-type rolls in the other "sections of the country" in which Omar, Inc., had bakery plants, and in which respondent competed with Omar, Inc., in the sale and distribution of these products;
3. Respondent has become, actually or potentially, the leading and dominant supplier of bread and bread-type rolls in the "section of the country" considering the entire distributional area of the bakeries of Omar, Inc., as one "section of the country";
4. Respondent has eliminated actual or potential competition by and between it and Omar, Inc., and between it and the other bakeries acquired as described in Paragraph Six, in each of the "section(s) of the country" or market areas described;
5. Respondent has substantially lessened actual and potential competition throughout the country in the manufacture, sale and distribution of bread and bread-type rolls;
6. Respondent has eliminated Omar, Inc., and the bakeries it has acquired as alleged in Paragraph Six as independent competitive factors in the manufacture, sale and distribution of bread and bread-

type rolls in the "section(s) of the country" described;

7. Respondent has enhanced its competitive advantage in the manufacture, sale and distribution of bread and bread-type rolls to the detriment of actual and potential competition throughout the country;
8. Respondent has significantly increased the trend to industry-wide concentration of the manufacture and sale of bread and bread-type rolls;
9. Respondent has precluded and prevented suppliers of various items and products used in the manufacture, sale and distribution of bread and bread-type rolls from selling same to Omar Bakery, Inc., as they did to Omar, Inc., and to the other bakeries described in Paragraph Six;
10. Respondent has enhanced its power and ability to preclude or foreclose new entrants into the bread and bread-type rolls industry in the sections of the country described.

PARAGRAPH TEN: The foregoing acquisitions and the acts and practices of respondents, as herein alleged constitute violations of Section 7 of the Clayton Act (U.S.C. Title 15, Section 18) as amended and approved December 29, 1950.

COUNT II

PARAGRAPH ELEVEN: All of the allegations of Paragraphs One through Nine hereof are hereby realleged and incorporated herein by reference, and made a part of this Count II as though each were set forth in full herein.

PARAGRAPH TWELVE: By its policies and practices of acquiring bakeries throughout the United States, respondent has acquired the power and ability to achieve an actual or potential monopoly in the manufacture, sale, and distribution of bread and bread-type rolls in the United States.

By virtue of its position in the bakery industry and its continuous growth by acquisitions, respondent has

acquired an actual or potential monopoly power to impede and prevent the growth and business opportunities of its competitors, as well as their ability to survive in the manufacture, sale and distribution of bread and bread-type rolls in the United States.

In the course and conduct of its business in commerce, respondent has used its increasingly dominant position and economic power to engage in, and is now engaged in, performing or effectuating various policies, acts and practices in the business of manufacture, distribution and sale of bread and bread-type rolls in the United States. Among such acts, methods and practices are:

1. Direct payments of cash to grocers for preferred space for the display of respondent's products;
2. Reductions in prices or charges to some grocers or retailers—without relation to any savings in respondent's costs in the manufacture, distribution, or sale of its products—for the purpose, or with the effect, of gaining entry into the stores of such grocers or retailers, thereby enhancing the potential resale of these products at the expense of competitive products;
3. Giving discriminatory rebates, discounts and allowances, by various methods, in order to enable the purchasers of respondent's bread, as well as its other bakery products, to reduce the consumer prices therefore, or in lieu thereof, to enjoy a greater net profit on retail sales of respondent's products.

PARAGRAPH THIRTEEN: The effect of the acquisitions alleged and the consequent and effectuating policies, methods acts and practices of respondent as alleged, has been or may be:

1. To divert to respondent, from its competitors, who are not in the economic position to successfully engage in such policies, methods, acts and practices, a substantial share of the sales of bread and bread type rolls;

2. To discourage or tend to foreclose the entry of any new competitors in the manufacture, distribution and sale of bread and bread-type rolls;
3. To lessen, hinder, restrain and suppress competition in the manufacture, sale and distribution of bread and bread-type rolls.
4. To actually or potentially enable respondent to dominate the manufacture, sale and distribution of its products, in various sections of the country; and
5. To tend to create a monopoly in respondent in the manufacture, sale and distribution of bread and bread-type rolls in those sections of the country where respondent sells and distributes such products.

PARAGRAPH FOURTEEN: The foregoing policies, methods, acts, practices and acquisitions of respondent, as herein alleged, are all to the prejudice of respondent's competitors and to the public; have a tendency or capacity to hinder and prevent, and have hindered and prevented, actual or potential competition in the manufacture, sale and distribution of bread and bread-type rolls in commerce and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Section 45) and constitute a violation thereof.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this 5th day of May , A.D. 1960, issues its complaint against said respondent.

NOTICE

Notice is hereby given to the respondent hereinbefore named that the 19th day of July , A.D. 1960, at 10 o'clock is hereby fixed as the time and Rye, New York, as the place when and where a hearing will be had before a hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered

requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the thirtieth (30th) day after service of it upon you. Such answer shall contain a concise statement of the facts constituting the ground of defense and a specific admission, denial or explanation of each fact alleged in the complaint or, if respondent is without knowledge thereof, a statement to that effect.

If respondent elects not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that respondent admits all material allegations to be true. Such an answer shall constitute a waiver of hearing as to facts so alleged, an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding shall be issued by the hearing examiner. In such answer respondent may, however, reserve the right to submit proposed findings and conclusions and the right to appeal under Section 3.22 of the Commission's Rules of Practice for Adjudicative Proceedings.

If any respondent elects to negotiate a consent order, it shall be done in accordance with Section 3.25 of the Commission's Rules of Practice.

Failure to file answer within the time above provided, and failure to appear at the time and place fixed for hearing, shall be deemed to authorize a hearing examiner, without further notice to respondent, to find the facts to be as alleged in the complaint, to conduct a hearing to determine the form of order, and, thereafter to enter an initial decision containing such findings and order.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary and its official seal to be hereto affixed at Washington, D.C., this 5th day of May , 1960.

By the Commission.

/s/ ROBERT M. PARRISH,
Robert M. Parrish,
Secretary.

STIPULATION EXHIBIT 5

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Docket No. 7880

IN THE MATTER OF
CONTINENTAL BAKING COMPANY,
a corporation

AGREEMENT CONTAINING CONSENT ORDER TO DIVEST AND TO CEASE AND DESIST

This agreement herein, by and between Continental Baking Company, a corporation, respondent in Docket No. 7880, by its duly authorized officers and attorneys, and by counsel supporting the complaint, subject to the approval of the Bureau of Restraint of Trade, Federal Trade Commission, is entered into in accordance with Section 3.25 of the Rules of Practice and Procedure of the Federal Trade Commission dated March, 1960. In accordance therewith the parties hereby agree that:

1. Respondent is a corporation doing business under and by virtue of the laws of the State of Delaware with its principal place of business located at Halstead Avenue, Rye, New York.
2. Pursuant to the provisions of Section 7 of the amended Clayton Act, and Section 5 of the Federal Trade Commission Act, the Federal Trade Commission on May 5, 1960, issued its complaint in this proceeding against respondent and a true copy was thereafter duly served on respondent.
3. Respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.
4. This agreement disposes of all of this proceeding as to all parties. The parties agree that the order contained herein is in the public interest for the reasons

set forth in the attached Appendix A which by reference is made a part of this agreement.

5. Respondent waives:

   (a) Any further procedural steps;
   (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
   (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.
7. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission.
8. This agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.
9. For the purposes of this agreement, the definition of bread and bread-type rolls shall be that used by the Bureau of the Census as set forth in the Census of Manufactures category S.I.C. 20511.
10. The following order may be entered in this proceeding by the Commission without further notice to respondent. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

ORDER

I

IT IS ORDERED that respondent, Continental Baking Company, a corporation, through its officers, directors, agents, representatives and employees shall within six (6) months from the date of service of this order upon it by the Federal Trade Commission, divest itself absolutely and in good faith, subject to the aproval by the Com-

mission, of all assets, properties, leases, rights and priviliges, tangible and intangible, including but not limited to all contract rights, plants, machinery, equipment, trade names, trade-marks and goodwill, acquired by respondent as a result of its acquisition of all of the assets of Omar Incorporated, together with all additions and and improvements made by respondent to such plants, machinery buildings, equipment and any other property of whatever description, as may be necessary substantially to reestablish the competition that was previously afforded by Omar Incorporated.

II

IT IS FURTHER ORDERED that respondent shall not sell or transfer the aforesaid assets, tangible or intangible, directly or indirectly, to anyone who at the time of divestiture is a stockholder, officer, director, employee, or agent of, or otherwise directly or indirectly connected with or under the control or influence of the respondent.

III

IT IS FURTHER ORDERED that for a period of ten (10) years from the date of issuance of this order by the Federal Trade Commission respondent shall cease and desist from acquiring directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital, or assets of any concern, corporate or non-corporate, engaged in any state of the United States in the production and sale of bread and bread-type rolls unless the Commission, on petition for modification of this Section III of this order, permits such an acqusition by respondent, said modification to be within the sole and final discretion of the Federal Trade Commission.

IV

IT IS FURTHER ORDERED that respondent shall submit to the Federal Trade Commission bi-monthly reports describing the action that has been taken and the

efforts that have been made to sell the subject assets. Such reports shall indicate the methods and means employed to effectuate a sale, the result of such actions and efforts and shall set forth the name and address of each person or company contacted, or who has indicated interest in acquiring said assets, together with copies of all correspondence and summaries of all oral communications with such persons or companies.

V

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days after divestiture of the subject assets, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

VI

IT IS FURTHER ORDERED that, except as provided in Paragraphs I, II and III of this order, the allegations of the complaint herein are dismissed.

Signed this 28 day of March, A.D., 1962.

CONTINENTAL BAKING COMPANY,
a corporation.

By /s/ R.NEWTON LAUGHLIN,
President
R. Newton Laughlin,
Halstead Avenue,
Rye, New York.

By /s/ ROY M. ANDERSON
Vice President
Roy M. Anderson
Halstead Avenue,
Rye, New York.

APPROVED:

/s/ J. WALLACE ADAIR
J. Walace Adair, Chief,
Division of Mergers,
Bureau of Restraint of Trade.

Covington & Burling,
Attorneys for Respondent

/s/ CECIL G. MILES
Cecil G. Miles,
Assistant Director,
Bureau of Restraint of Trade.

By /s/ PAUL C. WARNKE
Paul C. Warnke

/s/ JOSEPH E. SHEEHY
Joseph E. Sheehy,
Director,
Bureau of Restraint of Trade.

/s/ JOHN H. SCHAFER
John H. Schafer

By /s/ V. ROCK GRUNDMAN, JR.
V. Rock Grundman, Jr.
Counsel Supporting the
Complaint.

By /s/ EDWARD H. MCGRAIL
EDWARD H. MCGRAIL,
Counsel Supporting the
Complaint.

APPENDIX A TO AGREEMENT CONTAINING CONSENT ORDER TO DIVEST AND TO CEASE AND DESIST IN DOCKET NO. 7880

On May 5, 1960, the Commission issued its complaint against respondent, Continental Baking Company, a producer of bread and other bakery products, charging violation of Section 7 of the amended Clayton Act in connection with its acquisition of Omar, Inc., acquired in November 1958; the Rochester Bread Company, acquired in November 1958, and with Braun Baking Company, acquired in December 1958, and with violation of Section 5 of the Federal Trade Commission Act by its continuous practice of acquiring various baking concerns throughout the United States.

Hearings have been held in support of the complaint in Columbus, Ohio; Milwaukee, Wisconsin; Indianapolis, Indiana; and Omaha, Nebraska, as well as the District of Columbia. Further hearings are scheduled in connection with the Omar, Inc. acquisition. Hearings have not been held in Rochester, Minnesota, or Pittsburgh, Pennsylvania in relation to the Rochester and Braun acquisitions.

At the time of the above acquisitions, respondent was engaged in the production, sale and distribution of bakery products, on a wholesale basis, primarily under the trade name of "Wonder" for bread and "Hostess" for cakes. Respondent's products were baked in some 85 plants located in approximately 64 cities in 29 states and the District of Columbia and were distributed throughout 44 states. Respondent's sales for the year 1958 amounted to $328,004,000, and had increased to $410,642,000 in 1960.

The principal acquisition challenged by the complaint was that of Omar, Inc. Prior to its acquisition, Omar, Inc. was engaged in the production and sale of bread and other bakery products in plants located at Omaha, Nebraska; Indianapolis, Indiana; Milwaukee, Wisconsin; and Columbus, Ohio. Whereas respondent sold its products almost exclusively at wholesale to retail food stores, Omar's major distribution was through approximately

1,500 house-to-house retail routes throughout the States of Illinois, Indiana, Iowa, Wisconsin and portions of the States of Missouri, Kentucky and West Virginia. Respondent operated baking plants in each of the cities where Omar plants were located. Omar's sales for the year 1958 amounted to approximately $40,000,000.

The second acquisition alleged was that of the Rochester Bread Company located in Rochester, Minnesota. Rochester was engaged, prior to its acquisition, in the production of bread and other bakery products which it distributed at wholesale throughout the southeastern part of Minnesota and parts of Wisconsin. Rochester's 1958 sales amounted to $1,955,000.

The Braun Baking Company, the third company acquired, was located in Pittsburgh, Pennsylvania. Braun, through its one plant in Pittsburgh, was engaged in the production of bread and other bakery products which it distributed at wholesale in 10 counties in western Pennsylvania. Braun's sales for 1958 amounted to $6,773,902.

The Baking Industry

The Bureau of the Census classifies bread and bread-type rolls in a category separate and distinct from all other bakery products, S.I.C. 20511. This classification recognizes the fact that bread and bread-type rolls are a separate and distinct line of commerce since they contain different ingredients and require different type machinery and personnel for make up and baking than do cake and sweet goods.

Because of the nature of the goods produced, the operations of a baking plant are regional in nature. The distribution of bread and related products is limited by the distance they can be economically shipped to certain points from the plant and at the same time retain their most important characteristic, freshness. The geographical markets in which bakery products may be examined include a metropolitan area, and larger geographical markets such as the total area of distribution in which the acquired company sold bakery products.

The Omar Acquisition

By this acquisition, respondent acquired a company which, by dollar volume of sales, was considered at the time of acquisition as probably the eighth largest baking company in the United States. It acquired four baking plants with modern equipment located in four of the same cities in which respondent plants were located. Omar, Inc. sold and distributed substantially all of its bakery products on a house-to-house retail basis to housewives, rather than through grocery stores and supermarkets as did respondent.

Respondent has used the added capacities of these plants to employ inter-plant cross baking in each of these cities and has used some of the added capacity to extend its operations in the private label market in at least three of the four cities. In Indianapolis, Indiana, the fourth city, respondent entered the retail level by operation of retail concessions within grocery supermarkets. In each of the four cities respondent has increased its market shares.

The sections of the country measured in the Omaha market were the entire distribution area of the respondent's plant located at Omaha, Nebraska, as well as that of Douglas County, Nebraska, which included the metropolitan area of Omaha. Prior to the acquisition, 1958, within the entire distribution area of the respondent's Omaha plant, respondent accounted for 13.7% of the market, while Omar, Inc. accounted for 20.6% for a total of 34.3%. Within metropolitan Omaha, at this same time, respondent accounted for 9.8% and Omar, Inc. 15.2% for a total of 25%. Subsequent to the acquisition, 1959, respondent accounted for a total of 32.5% of their entire area of distribution, and 32.2% in 1960, for this same marketing area. Within the metropolitan Omaha marketing area, respondent accounted for 24.4% and 29.9% for the years 1959, and 1960, respectively.

In the remaining areas where both respondent and Omar operated baking plants, only the county, which was coextensive with the metropolitan area, was measured as a section of the country, each being representative of

the entire distribution areas of each of respondent baking plants. At the time of the acquisition, of all plant shipments and sales of bread and bread-type rolls within Franklin County, Ohio, which is coextensive with the metropolitan area of Columbus, respondent accounted of 12.9% of this market, and Omar accounted for 13.5% for a combined total of 26.4%. For the year 1959, this combined total amounted to 25.7%.

Marion County, Indiana, which is coextensive with metropolitan Indianapolis, was the section of the country measured as being representative of the entire area of distribution of the respondent's Indianapolis plant. Of the total plant shipments and sales of bread and bread-type rolls within this county in 1958, respondent accounted for 14.0% and Omar 14.8% for a total of 28.8%. In 1959 this combined total accounted for 26.5% of this market.

Milwaukee County, Wisconsin, which included metropolitan Milwaukee, was the market area measured as being representative of the area of distribution of respondent's Milwaukee plant. Within this market area in 1958, respondent accounted for 21.4% and Omar 9.5% for a total of 30.9% of the shipments and sales of bread and bread-type rolls. In 1959, this combination accounted for 32.0%.

The Rochester Acquisition

With this acquisition, in November 1958, respondent entered the metropolitan Rochester, Minnesota marketing area, an area in which it had not previously competed. Prior to the acquisition, the Rochester Bread Company was the largest independent wholesale baker in Rochester, which has a population of approximately 40,000. Besides distributing in metropolitan Rochester, the company operated routes which also distributed in approximately 23 counties in southeastern Minnesota, as well as one or two counties in southwestern Wisconsin. The section of the country measured in this acquisition was the entire area of distribution of Rochester Bread Company. The sales of bread and bread-type rolls by all

competitors within this area comprise the market universe and it is from this universe that the percentages of market shares are taken.

In 1958, Rochester's sales of $1,954,949 accounted for 12.6% of all of the sales of bread and bread-type rolls sold and distributed within its entire area of distribution. Plants of respondent, located at Minneapolis, Minnesota, Waterloo and Sioux City, Iowa, distributed on the fringes of Rochester's trading area. In 1958, these plants sold almost $700,000, or 5.8%, in bread and bread-type rolls within this market. None of the respondent plants sold in the City of Rochester, where most of Rochester's sales were concentrated. The combination of Rochester and respondent provided the latter with a combined total of 18.4% of this marketing area. With this market share, however, respondent was not the leading baking company since American Bakeries Corp., the only other national baker in this area accounted for 38.2%. Following were two independent wholesale bakers with 11.9% and 6.3%. Although four chain stores were in this market with their own private label bakery products (A&P, Kroger, National Tea, Red Owl) three accounted for a little over 2.0%, while the fourth, Red Owl accounted for 3.5%. In addition there were fourteen other independent bakers who accounted for anywhere from 0.2% to 5.1% of this market.

Subsequent to the acquisition, there was a reapportionment of the distribution areas of the Rochester and respondent plants. Rochester acquired a portion of the geographical area and some routes from the Waterloo and Sioux City plants, and at the same time traded several low-average routes to the Minneapolis plant in exchange for the same number of routes which had a higher route average. With the additional routes and added geographical area, Rochester's sales increased slightly to $2,005,653 in 1959, and as a result their market shares increased to 13.0% from 12.6%. However, since the respondent plants were no longer distributing in this area, the 13.0% represents an actual loss of 5.4% when compared with the 1958 combined sales which accounted for 18.4% of the market. Ameri-

can Bakeries increased their market share to 44.2%, thus remaining the leader, while most independent bakers either remained stable or reflected an increase in market shars from 0.1% to 1.0%. One baker showed a decrease of 0.3%. In 1960, Rochester's sales decreased to $1,874,710 and remained at approximately the same level for 1961 with sales of $1,878,701.

It is concluded that respondent's acquisition of the Rochester Bread Company has not violated Section 7 of the amended Clayton Act.

The Braun Acquisition

This acquisition by respondent was similar to the Rochester acquisition in that it provided respondent with a baking facility in the Pittsburgh, Pennsylvania marketing area. Prior to the acquisition, respondent had limited distribution in the outskirts of the metropolitan Pittsburgh market. At the time of this acquisition, 1958, Braun was the second leading wholesale baker in the ten county area of western Pennsylvania, with total sales of $6,773,902, representing 16.4% of the market. Ward Baking Company was the leading baker in this marketing area accounting for 16.6%, and A&P was third with 11.9%. Thirty other wholesale bakers competed in the ten county area, including National Biscuit Company (4.6%) and General Baking Company (0.1%). Besides A&P, the large chain grocery stores were Kroger Company (2.8%) and Loblaw, Inc. (0.4%). Kroger maintains its own baking plant, while Loblaw is supplied with private label bread by Hathaway Bakeries. Complete sales data for the ten county marketing area are not available for 1959.

Market share data available for Allegheny County, which includes Pittsburgh, for the years 1958 through 1961, shows that Braun in 1958 had 23% of the market and respondent had 1.7%. By 1961 Braun's market share had decreased to 19.5%, while respondent's was 3.0%. Thus, the total market shares of Braun and respondent combined decreased from the 1958 figure of approximately 25% down to 22.5% in 1961. At the same time there

was substantial growth by National Biscuit Company which increased over the years in question in the Allegheny County marketing area from 4.6% to 11.5%. The market shares of A&P and Kroger decreased slightly, whereas Ward's market share remained approximately the same. All of the decreased market shares seem to have been absorbed by the growth of National Biscuit Company.

Braun's dollar sales in 1961 were less than the total dollar sales in 1958, and the total units sold by Braun had similarly decreased by approximately 9%.

It is concluded that respondent's acquisition of the Braun Baking Company has not violated Section 7 of the amended Clayton Act.

Count II

The Second count of the complaint charges that respondent has violated Section 5 of the Federal Trade Commission Act by its "continuous practice of acquiring various bakeries throughout the United States." The theory of the count is that through these acquisitions, respondent has gained the power to engage in certain acts and practices which constitute unfair competition. The practices alleged are the making of payments for shelf space and entry into retail outlets, and the granting of discriminatory rebates, discounts and allowances.

The practices alleged in the second count as violations of Section 5 of the Federal Trade Commission Act might, if proven, be cognizable as well under Section 2 of the Clayton Act, as amended, by the Robinson-Patman Act. The legality of these pricing practices in themselves, however, is not intended to be challenged in this proceeding, but, rather, the enumerated practices are asserted as manifestations of the economic power attained through the continuous practice of acquisition.

The proposed Order, which is part of the Agreement to which this Appendix is attached, calls for complete divestiture of all the assets of the former Omar, Inc., which was probably the eighth largest baker in the

country at the time of acquisition. One of the principal problems in the baking industry is the tendency towards concentration and the continuous growth of major baking companies through acquisition. Such acquisitional growth and tendency towards concentration places in the hands of a few large companies the means to set the pattern of competition, not only among themselves, but also for all local baking companies serving any given area. The Omar, Inc. acquisition constituted the principal allegation of the complaint. Coupled with the divestiture is the order that the respondent shall cease and desist from acquiring for ten years any concern engaged in the production and sale of bread and bread-type rolls. If this order is adopted by the Commission, the respondent's alleged continuous practice of acquiring companies baking and selling bread and bread-type rolls will be brought to a halt and the major acquisition forming the gravamen of the complaint will be undone. Competition may be restored essentially as it existed before the acquisition of Omar, Inc., and the public interest will be well served.

One additional factor considered by counsel supporting the complaint and counsel for respondent in reaching this agreement is the fact that there are presently being litigated complaints of the Commission against the respondent, also relating to bread products, alleging violations of Section 2(a) and 2(d) of the Clayton Act as amended by the Robinson-Patman Act, Docket No. 7630, and violation of Section 5 of the Federal Trade Commission Act, Docket No. 8309.

It is, therefore, respectfully submitted that this consent order is in the public interest and should be issued by the Commission.

STIPULATION EXHIBIT 6

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Docket No. 7880

In the Matter of
CONTINENTAL BAKING COMPANY,
a corporation.

INITIAL DECISION

By Wilmer L. Tinley, Hearing Examiner.

Edward H. McGrail and V. Rock Grundman, Jr., for the Commission.

Covington & Burling, Washington, D.C., By Paul C. Warnke and John H. Schafer, for the Respondent.

On May 5, 1960, the Commission issued its complaint against respondent, Continental Baking Company, a producer of bread and other bakery products, charging violation of Section 7 of the amended Clayton Act in connection with its acquisition of Omar, Inc. and Rochester Bread Company, in November 1958, Braun Baking Company, in December 1958, and certain other companies during the period 1952 through 1958; and with violation of Section 5 of the Federal Trade Commission Act by its continuous practice of acquiring various baking concerns throughout the United States.

Hearings have been held in support of the complaint in Columbus, Ohio, Milwaukee, Wisconsin, Indianapolis, Indiana, and Omaha, Nebraska, as well as the District of Columbia. Further hearings, which were scheduled,

were cancelled because of submission by counsel of the agreement hereinafter referred to.

By its Order of February 28, 1962, the Commission waived in this case the provision of its Notice of July 14, 1961, requiring the filing prior to September 1, 1961, of a notice of intent to dispose of any pending proceeding by consent agreement; and referred to the hearing examiner for appropriate consideration under the applicable Rules of Practice the request of February 26, 1962, by counsel supporting the complaint on behalf of all parties to the proceeding, which was considered as a notice, timely filed, of intent to dispose of the proceeding by consent agreement.

Thereafter, on March 28, 1962, there was submitted to the hearing examiner an "Agreement Containing Consent Order to Divest and to Cease and Desist", which agreement was entered into by and between Continental Baking Company, by its duly authorized officers and attorneys, and by counsel supporting the complaint, with the approval of the Chief, Division of Mergers, and the Director, Bureau of Restraint of Trade, in accordance with Section 3.25 of the Commission's Rules of Practice in effect prior to July 21, 1961. By the terms of said agreement, the parties agree that:

1. Respondent is a corporation doing business under and by virtue of the laws of the State of Delaware with its principal place of business located at Halstead Avenue, Rye, New York.

2. Pursuant to the provisions of Section 7 of the amended Clayton Act, and Section 5 of the Federal Trade Commission Act, the Federal Trade Commission on May 5, 1960, issued its complaint in this proceeding against respondent and a true copy was thereafter duly served on respondent.

3. Respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

4. The agreement disposes of all of this proceeding as to all parties; and that the order contained

therein is in the public interest for the reasons set forth in Appendix A which is attached to the agreement and by reference is made a part thereof.

5. Respondent waives:

(a) Any further procedural steps;
(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement.

7. The agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission.

8. The agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

9. For the purposes of the agreement, the definition of bread and bread-type rolls shall be that used by the Bureau of the Census as set forth in the Census of Manufacturers category S.I.C. 20511.

10. The order incorporated in the agreement may be entered in this proceeding by the Commission without further notice to respondent. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

The hearing examiner has considered the agreement and the order contained therein, together with the representations made in Appendix A attached thereto, and is of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding in the

public interest. The content of the agreement meets all of the requirements of Section 3.25(b) of the Commission's Rules of Practice in effect prior to July 21, 1961. The agreement is, accordingly, hereby accepted, and the following order is issued.

ORDER

I

IT IS ORDERED that respondent, Continental Baking Company, a corporation, through its officers, directors, agents, representatives and employees shall within six (6) months from the date of service of this order upon it by the Federal Trade Commission, divest itself absolutely and in good faith, subject to the approval of the Commission, of all assets, properties, leases, rights and privileges, tangible and intangible, including but not limited to all contract rights, plants, machinery, equipment, trade names, trade-marks and goodwill, acquired by respondent as a result of its acquisition of all of the assets of Omar Incorporated, together with all additions and improvements made by respondent to such plants, machinery buildings, equipment and any other property of whatever description, as may be necessary substantially to reestablish the competition that was previously afforded by Omar Incorporated.

II

IT IS FURTHERED ORDERED that respondent shall not sell or transfer the aforesaid assets, tangible or intangible, directly or indirectly, to anyone who at the time of divestiture is a stockholder, officer, director, employee, or agent of, or otherwise directly or indirectly connected with or under the control or influence of the respondent.

III

IT IS FURTHER ORDERED that for a period of ten (10) years from the date of issuance of this order by the Federal Trade Commission respondent shall cease and

desist from acquiring, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital, or assets of any concern, corporate or non-corporate, engaged in any state of the United States in the production and sale of bread and bread-type rolls unless the Commission, on petition for modification of this Section III of this order, permits such an acquisition by respondent, said modification to be within the sole and final discretion of the Federal Trade Commission.

IV

IT IS FURTHER ORDERED that respondent shall submit to the Federal Trade Commission bi-monthly reports describing the action that has been taken and the efforts that have been made to sell the subject assets. Such reports shall indicate the methods and means employed to effectuate a sale, the result of such actions and efforts and shall set forth the name and address of each person or company contacted, or who has indicated interest in acquiring said assets, together with copies of all correspondence and summaries of all oral communications with such persons or companies.

V

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days after divestiture of the subject assets, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

VI

IT IS FURTHER ORDERED that, except as provided in Paragraphs I, II and III of this order, the allegations of the complaint herein are dismissed.

/s/ Wilmer L. Tinley
WILMER L. TINLEY
Hearing Examiner

April 2, 1962.

STIPULATION EXHIBIT 18

CONTINENTAL BAKING COMPANY
(INCORPORATED)

Executive Offices

HALSTEAD AVENUE
RYE, NEW YORK 10580

P.O. Box 731 Telephone (914) 967-4747

April 10, 1967

Mr. Carl J. Batter, Jr.
Attorney, Compliance Division
Bureau of Restraint of Trade
Federal Trade Commission
Washington, D.C. 20580

Re: Continental Baking Company
Docket No. 7880.

Dear Mr. Batter:

This is a reply to your letter of February 27, 1967, requesting certain information with respect to the Bon Ton Bakery. Inasmuch as some of your questions asked for information that would only be in possession of Mr. Alex Stepanzoff, the former operator of the Bon Ton Bakery, we have asked him to write us his responses where called for. Mr. Stepanzoff's letter is enclosed.

1-2. Attached to this letter are copies of the agreements in existence between Continental Baking Company and the Bon Ton Bakery from May 11, 1962 to date marked Schedule 1. You will note that there was a distributor agreement in effect from April 23, 1953 until May 1965 covering cake products. Actually, the cake distributorship commenced long before April 23, 1953.

Our agreements with Bon Ton, and the negotiations which led up to them, were all at the instigation of Mr.

Stepanzoff and were substantially as follows: Sometime in the early part of 1965 when Mr. Stepanzoff approached Mr. W. C. Noorda, Manager of our Spokane, Washington Bakery, and expressed concern over his rising production costs and resulting lowered profits, he stated a desire to have Continental take over his operation. Mr. Stepanzoff was told by Mr. Noorda that Continental could not purchase his bakery. Mr. Stepanzoff then suggested working out a bread distributorship, and Mr. Noorda subsequently advised Mr. Stepanzoff that Continental could add bread products to the cake line we were then supplying. Thereafter, in the early part of May 1965, arrangements with reference to Bon Ton becoming a full line bakery products distributor were worked out between Mr. Stepanzoff of Bon Ton and Mr. Noorda and Mr. Gordon Thomas of Continental. Our recollection of these discussions is substantially the same as that stated by Mr. Stepanzoff; specifically, that the discount was increased and that there was discussion of Mr. Stepanzoff's reluctance to commit himself to a long term as a distributor.

The new distributorship agreement covering both bread and cake was a year to year agreement, automatically renewed for a year unless terminated on ninety days' written notice, i.e., early in February of each year. Neither party gave the notice in February of 1966 that would have been necessary to terminate the distribution arrangements for the 1966-1967 year. However, in March of 1966, Mr. Stepanzoff contacted Mr. Noorda and expressed considerable and increasing discontent with his obligations under the contract. Mr. Stepanzoff asked Mr. Noorda whether Continental would be willing to relieve him of his obligations under the distributorship agreement by assuming for itself the distribution of its products. We wanted to comply with Mr. Stepanzoff's wishes if we could since, as a business matter, a distributor who is not interested in actively promoting his business is a definite drag on the bakery sales and profits. Finding another distributor in western Montana to take over Bon Ton's distribution assets was not a realistic possibility. It would of course have been very

simple to abandon Mr. Stepanzoff entirely simply by leasing depot space and trucks—the only assets necessary to continued distribution of Continental's products in that market. For obvious reasons we did not want to treat Mr. Stepanzoff in this way. Therefore, Mr. Noorda agreed, after consulting with the home office, that Continental itself would take over Mr. Stepanzoff's distributorship of Continental's bread and cake products. The arrangements for this transfer were made in Missoula between Mr. Stepanzoff and Messrs. Noorda and Thomas in the middle of March, 1966.

3. Bon Ton commenced the distribution of bread products produced by Continental at its Spokane, Washington bakery on July 12, 1965. Attached hereto, marked Schedule 2, is a recap of the weekly dollar sales of bread products to Bon Ton from the week ending July 17, 1965, through the week ending March 26, 1966. Figures showing the count or poundage involved are not maintained.

4. To the best of our knowledge Bon Ton terminated production of bread products on July 10, 1965. Please refer to Mr. Stepanzoff's letter for the remainder of the information requested.

5. The only assets acquired were Bon Ton's accounts receivable, its trademark "Bon Ton" (which was no longer in use), its good will, all but approximately $1,800 of its bank account, and title to its trucks. In consideration, Continental cancelled all outstanding invoices for products sold to Bon Ton, and also cancelled the outstanding indebtedness on a loan previously made to Mr. Stepanzoff for working capital.

6. No formal contracts of employment have ever been made between Continental and Mr. Stepanzoff or with any of the former employees of Bon Ton. Following termination of production by Bon Ton some production employees were hired by our Spokane, Washington bakery. Others obtained employment with the Safeway Bakery in Missoula, Montana, and with other employers. At the time Continental took over the distributorship in March of 1966 it took assignment of the labor contract with the Teamsters Union and thereafter those Teamster

members became Continental employees under the same union contract terms. Since March of 1966 Mr. Stepanzoff has been employed at a salary of $200 per week commencing March 28, 1966.

7. See Mr. Stepanzoff's letter.

8. See Mr. Stepanzoff's letter. For a short period of time after July of 1965 Continental sold the Bon Ton Bakery certain bread products carrying the trademark "Bon Ton." Thereafter all bread products sold to this distributor carried the trademark "Wonder."

9. See Mr. Stepanzoff's letter.

10. Consideration for Mr. Stepanzoff's distributorship did not include any payments in cash or checks.

We trust that this will satisfactorily answer all the questions you may have on Missoula.

Very truly yours,

CONTINENTAL BAKING COMPANY

/s/ Roy M. Anderson
ROY M. ANDERSON
Vice-President and
General Counsel

RMA:eb
Enc.

cc: John H. Schafer, Esq.

STIPULATION EXHIBIT 18B

SALES AGREEMENT

Independent Dealer

THIS AGREEMENT made and entered into this day of May, 1965, between Continental Baking Company (hereinafter referred to as "Company") and Alexander Stepanzoff residing at Missoula, Montana (hereinafter referred to as "Dealer").

WITNESSETH

For and in consideration of the mutual covenants of the parties hereto, Company hereby agrees to sell to Dealer and Dealer agrees to purchase from Company, Dealer's requirements of bakery products produced by Company or carried in its line, as they shall be ordered by Dealer from time to time, subject to the following conditions:

1. All products ordered by Dealer will be sold to him F.O.B. Missoula, Montana at Company's prevailing wholesale prices in Missoula, Montana, as they may be from time to time, less a discount of 25%.

2. Company hereby assigns to Dealer as his exclusive sales territory the area circumscribed on the map attached hereto. The assigned territory may be enlarged or limited by the parties upon their mutual agreement.

3. (a) Company will invoice Dealer for products delivered to him with each delivery. In addition, Company will invoice the Dealer 10¢ for each shipping carton delivered to Dealer. A credit of 10¢ per carton will be given to Dealer upon its return to Company's transport trailer. No credit will be allowed on damaged shipping cartons to the extent that the damage thereto exceeds Company's normal experience on damaged cartons. (b) Dealer must pay each invoice within 10 days of receipt by Dealer

failing which Company may suspend deliveries and/or terminate this agreement on three (3) days advance written notice. (c) Company will accept in payment of invoices cash, cashier check, or checks drawn on Dealer.

4. Company will supply Dealer at Company's expense all special display racks ordered by Dealer subject, however, to Company's approval thereof. Dealer will be required to maintain all racks in good merchandising condition and to replace same when necessary for proper display of products.

5. Dealer agrees to devote his personal efforts at all times to sell and service the territory covered by this agreement. Each account will be served with full rack service with Dealer crediting each account for stale returns and damaged goods. Dealer will be responsible for the expense of all stale returns and damaged goods.

6. In the event Dealer's net receipts, including charges, from the sale of products purchased from Company over any one (1) week period, after deduction of all expenses of operating the dealership, shall amount to less than $200 per week, Company will adjust Dealer's discount set forth in paragraph 1, retroactive to the beginning of any such week, to a discount percentage which will result in the net receipts to Dealer, after deduction of expenses, of $200 for said week. In the event Dealer's net receipts, including charges, from the sale of products purchased from Company over any four (4) week period, after deduction of all expenses of operating the dealership, shall amount to more than $800, the discount to Dealer for ensuing weeks shall be adjusted downwards to a discount percentage which would have resulted in net receipts to Dealer for said four (4) week period, after deduction of expenses, of $800. The first one (1) week period and the first four (4) week period shall be deemed to commence on the first Monday following commencement of performance under this Agreement.

7. It is anticipated that occasions may arise when Dealer may not give his personal attention to the selling and servicing of accounts in his territory. In the event Dealer is unable to perform his duties due to illness or in the event Dealer elects to be absent for vacation purposes, subject to the requirements set forth below, Company will supply to Dealer at no cost to Dealer and Dealer will accept from Company a supervisory employee of Company who will manage the dealership during the period of illness or vacation.

During the first year of this Agreement, Dealer may elect to take one (1) week's vacation; during the second year through the tenth year of this Agreement Dealer may elect to take two (2) weeks' vacation; thereafter Dealer may elect to take three (3) weeks' vacation per year. Dealer agrees to give Company six (6) months' advance written notice of his intent to take a vacation.

8. At all times during the terms of this Agreement Dealer shall, at his expense, maintain comprehensive general public liability and property damage insurance with an insurance company acceptable to Company naming Company as an additional insured. Said insurance shall be written in limits of no less than $100,000/$300,000 bodily injury and $25,000 property damage. A certificate evidencing said coverage shall be delivered to Company on demand.

9. The obligation of Company to deliver products to Dealer and Dealer's obligation to purchase his requirements of products from Company shall be subject to interruption or delays caused by strikes, labor difficulties, acts of God, equipment failures, and casulties not within the control of the parties hereto.

10. In the event of a termination of this Agreement for any reason whatsoever, Dealer covenants and agrees he will not compete with Company or with another Dealer of Company in the sale of products similar to those covered by this Agreement and in

the territory covered by this Agreement for the period of five (5) years.

11. In the event of death of Dealer or termination of this Agreement pursuant to the provisions in paragraph 16, the Company shall have the option, to be exercised within 30 days of date of death or termination of the Agreement, to purchase Dealer's dealership including all delivery vehicles, trademarks, tradenames, and wire trays at a price of $37,500.00.

In the event Company does not exercise its option to purchase and the dealership is sold to a third party this contract will continue in effect as to said third party provided he shall meet Company's credit requirements.

12. Dealer covenants and agrees as follows:

A. To service all accounts in his territory as often as may be necessary to develop maximum sales, but at least once per day excluding Sundays.

B. To install point of purchase material, supplied by Company at its expense, in accordance with the recommendations of Company and in amounts adequate to insure maximum sales and advertising benefit from promotional programs.

C. To use his best efforts to arrange for in-store demonstrations of Company's products subject to Company's prior written approval of the demonstration and the demonstrator to be employed. Company agrees to pay the wages of the demonstrator and to supply any give-aways to Dealer at no cost to Dealer. The expenses of any samples utilized during the demonstration will be at Company's expense.

D. To keep his trucks properly painted at all times in accordance with Company specifications. Company will supply Dealer with truck decals at Company's expense.

E. To conform to Company's code requirements for the age of products purchased from Company and sold to Dealer's accounts.

F. To sell in his territory only products carried by Company in its line or those for which Dealer obtains prior written approval from the Company.

G. To keep and maintain route books containing the name, address, and weekly purchases of each account in Dealer's territory. These route books shall be deemed an asset of the dealership and shall be transferred with the dealership in accordance with the provisions of this Agreement.

H. To operate and maintain in a safe and sanitary condition delivery trucks adequate to properly sell and service all accounts in the territory.

I. To comply at all times with any applicable Federal, State or Local Food and Drug Laws and regulations.

J. To maintain, at Dealer's expense, sanitary warehouse space for the receipt and storage of products purchased from Company, said warehouse space to have proper access for a transport trailer.

K. Sell all products purchased from Company at established wholesale prices and in accordance with the Company's established discount policies.

13. In the event Dealer shall breach any terms of this Agreement including any of the covenants set forth in paragraphs 3 and 12 hereof, then Company may terminate this Agreement on 10 days advance written notice.

14. In the event of termination of this Agreement for any reason whatsoever, Dealer agree to obliterate

any and all advertisements and references to Company or Company's trademarks from his delivery equipment before it is used for any other purpose whatsoever.

15. All private label sales shall be at the sole discretion of Company and Dealer shall not solicit any such business. Company reserves the right to make warehouse delivery or store-door delivery of private label products in the territory without any obligation whatsoever to Dealer.

16. Dealer agrees that during the term of this Agreement Company shall have the right and license to use Dealer's trademark "Bon Ton" on any or all bakery products supplied by Company to Dealer pursuant to this Agreement. Upon termination of this Agreement for any reason, Company shall discontinue any and all use of said trademark.

17. Except as otherwise provided herein, this Agreement shall remain in effect for the period of one (1) year from the date hereof and shall be automatically renewed from year to year therafter provided, however, that either party may terminate this Agreement after one (1) year or at the end of any anniversary year thereafter upon 90 days advance written notice.

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed in its name and on its behalf by its agent, and the Dealer has hereunto set his hand and seal, the day and year first above written.

CONTINENTAL BAKING COMPANY

ATTEST:

/s/ Illegible By /s/ W. H. Noorda

WITNESS:

/s/ Illegible /s/ ALEX STEPANZOFF

STIPULATION EXHIBIT 18F

535 Keith Avenue
Missoula, Montana
April 8, 1967

Mr. Roy M. Anderson, Vice President
Continental Baking Company
Executive Offices
Halstead Avenue
Rye, New York, 10580

Dear Mr. Anderson:

Since the Federal Trade Commission has requested you to furnish certain information pertaining to my operations in Missoula, Montana, I hope this letter will help you comply with the request.

First, I want you to know that my training was in banking, and not baking. My father-in-law, Mr. Eugene Graf, Sr., was in the baking business with his son for a long time, and finally prevailed upon me to resign my position with the Chase National Bank of New York, and enter the family business as financial advisor.

By 1961, however, my in-laws got out of the baking business, and I was left as sole owner of the Bon Ton Bakery of Missoula.

It was then that I began to feel the strain of carrying too big a load in production, distribution, and management. There was a shortage of skilled and competent people in the baking industry, here in Missoula, and I was handicapped in my operations, especially in supervisory personnel.

To evaluate my situation, and the outlook for the future, I employed the services of industrial consultants, the George S. May Company.

In 1962 I was hospitalized for a minor coronary occlusion, and was advised by my physician to curtail my activities.

In 1963 I was operated for bleeding ulcers, when half of my stomach was removed.

In 1964, due to the increased costs of ingredients, labor, and lack of automation, I sustained a substantial loss for the first time in the history of my operations. It was around $25,000.00.

The outlook for the future was uncertain, and I was getting older—sixty-five this coming June. My wife and my daughter discussed our future, and pleaded with me to do something about the bakery operations, to get them out of my estate.

In 1965 negotiations with the Bakers' Union, a severance clause was introduced for the first time. It provided that should any bakery be sold, every employe of that bakery was to be paid an additional compensation, "a weekly wage for each year employed by that bakery."

This, of course, would have added financial strain on my family, and also made it less attractive to any prospective buyer.

I realized too, how much simpler my problems were as a distributor of Hostess Cakes throughout Western Montana. Therefore, it was only natural for me to bring this matter to the attention of my good friend, Mr. Wif Noorda, Manager of the Continental Baking Company Plant in Spokane, Washington, when he visited Missoula on cake business. This plant supplied me with cakes for many years.

The personnel of the plant was most kind, cooperative, and helpful to me, and I established a deep personal friendship with the management of that plant.

When Mr. Noorda informed me that the Continental Baking Company could not buy my bakery, I told him that I had decided to get out of production as soon as possible, and therefore, would like to distribute Wonder Bread, as well as Hostess Cakes. Mr. Noorda agreed to cooperate.

The final agreement was worked out by Mr. Noorda, Mr. Thomas, and me. My discount on Continental mer-

chandise was increased from 20 to 25 percent. Duration of the distribution agreement was on year to year basis, with options to terminate on 90 days' written notice. It was also agreed that I could sell my distributorship, on approval, to a third party.

I needed more working capital to accommodate Continental's stricter credit requirements, and they agreed on a loan of $37,500.00, but insisted on some security in case of my death. I agreed to give them an option to purchase my distributorship for the amount of the loan, as it was a fair value for the distributorship assets. This distributorship was in operation most of the year when new problems arose.

With the Teamsters' Union demand for a five-day week, and Eddy's demand for a six-day distribution, since their production was also on a six-day basis, while that of the Continental Baking Company of Spokane, Washington, was on a five-day basis for my supplies, I faced a competitive disadvantage of distribution of two-day old bread on Wednesdays.

On March 1, 1966, I had a scare of a second heart attack, and was briefly hospitalized.

My family then insisted that I sell my distributorship, as they did not want it on their hands should anything happen to me.

I brought these problems to the attention of Mr. Noorda, and asked him to buy my distributorship. This transaction was consummated by the end of March of 1966.

In the meantime, I sold a Panomat, and two wrapping machines to Cohen Bros of Chicago, and some equipment to the Super Save in-store bakery here in Missoula. I expect to be selling still other equipment.

We also used our Miracle Mix in one of our breads until 1962, when this trade mark was sold to the National Biscuit Company of New York. This trade mark, however was the development and the property of my father-in-law, Mr. Eugene Graf, Senior, and he received money for the sale of it.

As a citizen of Missoula, Montana, I have had many honors, and in return, I do what I can for the community.

I am Director of the Missoula City Bank, a Senior Member of the University of Montana Executive Board, and a member of the Cosmos Club, Rotary, and the Elks. Enclosed please find audited profit and losses, and balance sheets for 1962-1964, as well as Bon Ton and Federal income tax returns for 1965.

Sincerely,

ALEX STEPANZOFF

AS:jgs

Enc's

P.S. Production figures for 1965 are no longer available, as I had no use for them on the termination of my distributorship.

BOSN - 575 - 11-20-50

STIPULATION EXHIBIT 18G

SCHEDULE "Z"

RECORD OF GROSS SALES BY WEEKS TO DON TON # MISSOULA, MONTANA FROM 7-5-1965 to 3-26-66

Week Ending Date	Bread Sales	Cake Sales	Sweet Goods Sales		TOTAL GROSS SALES		
7-12-65	12 [illegible] 19	2948 89	1460 69		17 389 17		
7-24	15 252 36	2 793 11	1424 13		17 469 50		
7-31	11 623 01	2561 39	1402 48		15 585 88		
8-7	12 023 44	2182 35	1150 15		15 356 94		
8 14	12 081 91	2 135 21	1000 09		15 217 21		
8 21	11 738 80	2119 74	1065 09		14 923 63		
8 28	11 638 97	2 427 11	1206 80		15 272 88		
9 4	11 071 81	2 281 40	1117 78		14 470 99		
9 11	8 973 70	2 583 40	967 49		12 524 59		
9 18	8 944 30	2 285 23	918 66		12 148 19		
9 25	8 778 60	2162 93	743 14		11 684 67		
	123 105 49	26 481 76	12 456 40		162 043 65		
10 2	9 552 10	2 175 26	766 43		12 493 79		
10 9	9 425 48	2 358 77	1022 81		12 807 06		
10 16	9 715 38	2426 16	728 30		12 871 84		
10 23	9665 21	2335 45	659 02		12 659 68		
10 30	10 354 02	2705 93	817 03		13 876 98		
11 6	9 472 31	2 812 65	693 88		12 978 84		
11 13	9 454 35	2 156 99	550 19		12 161 53		
11 20	10 429 33	3 034 34	790 63		14 254 30		
11 27	10 671 78	3 049 83	535 38		14 256 69		
12 4	9 817 48	2 446 56	761 01		13 025 05		
12 11	10 187 91	[illegible] 647	468 65		13 420 03		
12 18	10 110 83	2930 31	525 55		13 566 69		
12 24	8 917 86	1 733 78	519 99		10 771 63		
	129 671 24	32 634 50	8 831 87		169 143 61		
1 1 66	8 721 79	1 313 06	381 42		10 416 27		
1 8	10 686 60	2 419 85	417 12		13 533 77		
1 15	9 820 72	2 274 73	631 49		12 776 94		
1 22	9 373 91	2 329 60	411 50		12 115 01		
1 29	9 713 93	2 189 23	595 25		12 496 41		
2 5	10 323 57	2 515 22	469 33		13 308 12		
2 12	10 548 34	2 533 05	637 03		13 758 42		
2 19	10 273 94	2 517 06	560 55		13 351 54		
2 25	10 216 29	2 300 68	543 74		13 060 71		
3 5	10 125 40	3 203 19	658 22		13 986 81		
3 12	10 293 91	2 405 24	671 98		13 373 13		
3 19	9 947 91	2 172 27	425 45		12 070 58		
3 26	9 146 40	3 029 12	595 76		12 771 30		
	124 819 91	31 200 24	6 991 91		167 019 01		
LIBBY	641 00	229 00	50 00		920 00		
WOOLARD							
KALISPELL	1535 00	275 00	46 00		1856 00		
					2776 00		

STIPULATION EXHIBIT 22

SALES AGREEMENT

Independent Dealer

THIS AGREEMENT made and entered into this 17th day of April, 1966, between CONTINENTAL BAKING COMPANY (hereinafter referred to as "Company") and WYOMING BAKING COMPANY of Casper, Wyoming (hereinafter referred to as "Dealer").

WITNESSETH

For and in consideration of the mutual covenants of the parties hereto, Company hereby agrees to sell to Dealer, and Dealer agrees to purchase from Company, Dealer's requirements of bakery products produced by Company or carried in its line, as they shall be ordered by Dealer from time to time, subject to the following conditions:

1. All products ordered by Dealer will be sold to him F.O.B. Casper, Wyoming at Company's prevailing wholesale prices in Casper, Wyoming, as they may be from time to time, less a discount of 30% on cake and sweet goods items and a discount of 38% on bread items.

2. Company hereby assigns to Dealer as his exclusive sales territory the area circumscribed in red on the map attached hereto. In addition to this, Company hereby assigns to Dealer as non-exclusive sales territory the area circumscribed in blue on said map. These assigned territories may be enlarged or limited by the parties upon mutual agreement.

3. (a) Company will invoice Dealer for products delivered to him with each delivery.

(b) Dealer must pay each invoice within ten days of receipt by Dealer, failing which, Company may suspend deliveries and/or terminate this agreement on three (3) days advance written notice.

(c) Company will accept in payment of invoices cash, cashier checks, or checks drawn on Dealer.

4. Company will supply Dealer at Company's expenses all special bread and cake display racks ordered by Dealer, subject however to Company's approval thereof. Dealer will be required to maintain all racks in good merchandising condition and to replace same when necessary for proper display of products.

5. Dealer agrees to devote his personal efforts at all times to sell and service the territory covered by this agreement. Each account will be served with full rack service with Dealer crediting each account for stale returns and damaged goods. Dealer will be responsible for the expense of all stale returns and damaged goods.

6. It is anticipated that occasions may arise when Dealer may not give his personal attention to the selling and servicing of accounts in his territory. In the event Dealer is unable to perform his duties due to illness or in the event Dealer elects to be absent for vacation purposes, subject to the requirements set forth below, Company will supply to Dealer at no cost to Dealer, and Dealer will accept from Company a supervisory employee of Company who will manage the dealership during the period of illness or vacation.

During the first year through the tenth year of this agreement, Dealer may elect to take two (2) weeks' vacation; thereafter Dealer may elect to take three (3) weeks' vacation per year. Dealer agrees to give Company six (6) months' advance written notice of his intent to take a vacation.

7. At all times during the terms of this agreement, Dealer shall, at his expense, maintain comprehensive general public liability and property damage insurance with an insurance company acceptable to Company naming Company as additional insured. Said insurance shall be written in limits of no less than $100,000/$300,000 bodily injury and $25,000 property damage. A certificate evidencing said coverage shall be delivered to Company on demand.

8. The obligation of Company to deliver products to Dealer and Dealer's obligation to purchase his requirements of products from Company shall be subject to interruption or delays caused by strikes, labor difficulties,

acts of God, equipment failure, and casualties not within the control of the parties hereto.

9. In the event of a termination of this agreement for any reason whatsoever and Company shall exercise it's option to purchase the dealership as provided in Paragraph 10, then Dealer covenants and agrees he will not compete with Company or with another Dealer of Company in the sale of products similar to those covered by this agreement and in the territory covered by this agreement for the period of five (5) years.

10. In the event of death of Dealer or termination of this agreement pursuant to the provisions in Paragraph 15, the Company shall have the option, to be exercised within thirty (30) days of date of death or termination of this agreement, to purchase Dealer's dealership including all delivery vehicles, trademarks, tradenames, route books, and delivery equipment at a price of $170,000.00.

In the event Company does not exercise it's option to purchase and the dealership is sold to a third party, this contract will continue in effect as to said third party provided it shall meet Company's credit requirements.

11. Dealer covenants and agrees as follows:

a. To service all accounts in his territory as often as may be necessary to develop maximum sales, but at least once per day excluding Sundays.

b. To install point of purchase material, supplied by Company at its expense, in accordance with the recommendations of Company and in amounts adequate to insure maximum sales and advertising benefit from promotional programs.

c. To use his best efforts to arrange for in-store demonstrations of Company's products subject to Company's prior written approval of the demonstration and the demonstrator to be employed. Company agrees to pay the wages of the demonstrator and to supply any give-aways to Dealer at no cost to Dealer. The expenses of any samples utilized during the demonstration will be at Company's expense.

d. To keep his trucks properly painted at all times in accordance with Company specifications. Company will supply Dealer with truck decals at Company's expense.

e. To conform to Company's code requirements for the age of products purchased from Company and sold to Dealer's accounts.

f. To sell in his territory only products carried by Company in its line or those for which Dealer obtains prior written approval from the Company.

g. To keep and maintain route books containing the name, address, and weekly purchases of each account in Dealer's territory. These route books shall be deemed an asset of the dealership and shall be transferred with the dealership in accordance with the provisions of this agreement.

h. To operate and maintain in a safe and sanitary condition delivery trucks adequate to properly sell and service all accounts in the territory.

i. To comply at all times with any applicable Federal, State or local Food and Drug Laws and Regulations.

j. To maintain, at Dealer's expense, sanitary warehouse space for the receipt and storage of products purchased from Company, said warehouse space to have proper access for a transport trailer.

k. Sell all products purchased from Company at established wholesale prices and in accordance with the Company's established discount policies.

12. In the event Dealer shall breach any terms of this agreement including any of the covenants set forth in Paragraphs 3 and 11 hereof, Company shall give prompt written notice thereof to Dealer and should Dealer fail to remedy said breach or reach an agreement with Company within thirty days after notice from Company, then Company may terminate this agreement on ten days' advance written notice.

13. In the event of termination of this agreement for any reason whatsoever, Dealer agrees to obliterate any and all advertisements and references to Company or

Company's trademarks from his delivery equipment before it is used for any other purpose whatsoever.

14. All private label sales shall be at the sole discretion of the Company.

15. Except as otherwise provided herein, this agreement shall remain in effect for the period of five (5) years from the date hereof and shall be automatically renewed from year to year thereafter provided, however, that either party may terminate this agreement after five (5) years or at the end of any anniversary year thereafter upon ninety (90) days' advance written notice.

16. Company agrees to render the Dealer at no cost to Dealer the various services outlined below:

a. All of Dealer's trucks will be equipped with tray racks at Company's expense.

b. All merchandise ordered by Dealer will be transported on trays.

c. Company will make available to Dealer its regional accounting and vehicular staffs to assist Dealer in setting up an adequate bookkeeping system, a fleet maintenance program and fleet efficiency programs.

d. When possible, Company will assist Dealer in purchasing vehicular equipment and repair parts through Company's suppliers and at Company's price schedules.

e. Company will make available to Dealer one Cake Merchandiser who will devote full time to the development of cake sales in Dealer's territory and the training of Dealer's cake sales supervision. Any display material deemed important for the development of cake sales in Dealer's territory will be furnished by Company at no expense to Dealer.

f. During the first three months of this agreement, Company will make available to Dealer at no cost to Dealer one Bread Sales Merchandiser who will devote his time exclusively to the development of bread sales in Dealer's territory. Thereafter, Company will supply Dealer with bread sales and mer-

chandising assistance when deemed necessary by Company.

g. Company will make its Accounting Department in Denver, Colorado available to the Dealer for the purpose of handling Dealer's Driver Salesman daily settlements and the invoicing of the various charge account customers of Dealer. These accounting services will operate in the following manner:

Each day Dealer's Driver Salesmen will be charged out with the merchandise delivered to him by Dealer at full wholesale price. At the end of each day, each Driver Salesman will turn in to Dealer his stale returns and receive a credit slip therefor. The cash collections, charge slips, stale return slip and a copy of the Salesman's charge out for merchandise that day will be deposited by each Driver Salesman in a locked canvas bag for which each Driver Salesman shall have a key. The various locked bags from the Driver Salesman will be transported by Company to Denver in a vault located in its transport trailer. The bags will be opened by Company's cashier in Denver with duplicate keys in the possession of the cashier only. Company will reconcile Salesman's settlement sheet with the charge out sheet, the credit for stale returns, the cash receipts and the charge tickets and post to the proper ledger accounts.

All cash receipts received from Dealer's Driver Salesman will be credited against amounts due from Dealer to Company for product purchased by Dealer. Copies of the ledger entries and the Driver Salesman reconciliations will be furnished to Dealer within two days.

On Wednesday of each week, Company shall prepare on Dealer's letterhead invoices directed to each of Dealer's charge customers for purchase for the preceding week ending on Saturday plus any outstanding balance. These invoices will be delivered to Dealer by Thursday morning of each week, and Dealer shall, in turn, mail said invoices to its charge customers.

Payment of all invoices will be made to Dealer, but Dealer shall promptly notify Company of any receipts to be posted against the proper ledger account.

Dealer shall be solely responsible for the collection of its accounts receivable and will further be responsible for any Driver Salesman shortages that may occur.

17. Performance of this agreement will be consumated as soon as possible after execution, in any event, within sixty (60) days of the Contract date.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized representatives the day and year first above written.

ATTEST:	Continental Baking Company
/s/ [Illegible] Secretary	By /s/ [Illegible] Treasurer
ATTEST:	Wyoming Baking Company
/s/ [Illegible]	By /s/ [Illegible]

STIPULATION EXHIBIT 22A

CONTINENTAL BAKING COMPANY
(INCORPORATED)

Executive Offices

Halstead Avenue
Rye, New York 10580

P.O. Box 731 Telephone (914) 967-4747

October 18, 1966

Carl J. Batter, Jr., Esq.
Compliance Division
Bureau of Restraint of Trade
Federal Trade Commission
Washington, D.C. 20580

Re: Continental Baking Company
Docket No. 7880

Dear Mr. Batter:

Your letter of September 26, 1966, addressed to Mr. Whamond, Secretary of Continental Baking Company has been referred to me for reply. As I indicated to you in my letter of October 11th, it was necessary to obtain this information from our various bakeries throughout the United States due to the fact that most independent dealership arrangements are processed locally.

Attached hereto marked Exhibit "A" is a copy of the map attached to the original contract with the Wyoming Baking Company. Inasmuch as colors are not capable of reproduction, I would like to point out to you the line surrounding Sheridan, Gillette, Douglas, Bairoil and Dubois is the area outlined in red on the original map. The area outlined on your copy by the line surrounding Rawlins, Medicine Bow, and Encampment is the area outlined in blue on the original map.

Performance under our contract with the Wyoming Baking Company commenced on June 13, 1966. Since that time bread sales from our Denver plant to the Wyoming Baking Company have averaged $14,000.00 a week. The actual sales for the weeks ending June 18, 1966 through September 24, 1966, are set forth on Exhibit "B" attached hereto. As for the sales of bread and bread-type rolls by the Wyoming Baking Company during the one year period prior to our contract with them, I must advise that these figures are not available. They would be found only in the corporate records of the Wyoming Baking Company.

At the time Mr. Schafer and I visited with you and Mr. Gercke, I believe I advised you that our contract with the Wyoming Baking Company had been modeled after a standard independent distributor contract which we had developed for our potato chip business. It was on the basis of one of those potato chip contracts that our negotiations were commenced. In our contracts with independent distributors of potato chips, there is a standard provision embodying an option to purchase. For some reason Mr. Sneesby of the Wyoming Baking Company insisted on that clause being in his contract. I have advised you, however, that it is not the intention of Continental Baking Company at any time to exercise that option.

The other dealership contracts we have pertaining to bread and bread-type rolls are on a form contract which is held at each individual bakery. That particular type of contract does not include an option to purchase. I am enclosing a copy of that form contract herewith marked Exhibit "C" to illustrate my point.

Inasmuch as all of our dealership contracts on bread and bread-type rolls, with the exception of the one with the Wyoming Baking Company, are either on an oral basis or written on a contract represented by Exhibit "C", you can understand that we have not exercised any options to purchase dealerships since May 11, 1962, since none existed.

To give you more complete details on our independent distributor business, I am enclosing herewith a schedule marked Exhibit "D" setting forth the name and address of each independent distributor of bread and bread-type rolls in the United States.

I trust that my response gives you all of the information you have requested and will satisfy your questions completely.

Very truly yours,

/s/ Gordon A. Thomas
GORDON A. THOMAS
Associate Counsel
CONTINENTAL BAKING COMPANY

GAT:eb

Enc.

• • • •

STIPULATION EXHIBIT 30

SALES AGREEMENT

Independent Dealer

THIS AGREEMENT made and entered into this day of August, 1966, between CONTINENTAL BAKING COMPANY (hereinafter referred to as "Company") and SHEPPARD BAKING COMPANY of Durango, Colorado (hereinafter referred to as "Dealer").

WITNESSETH

For and in consideration of the mutual covenants of the parties hereto, Company hereby agrees to sell to Dealer, and Dealer agrees to purchase from Company, Dealer's requirements of standard bakery products produced by Company or carried in its line, as they shall be ordered by Dealer from time to time, subject to the following conditions:

1. All products ordered by Dealer will be sold to it f.o.b. Durango, Colorado at Company's prevailing wholesale prices in Durango, Colorado, as they may be from time to time, less a discount of 30% on cake and sweet goods items and a discount of 35% on bread items.

2. Company hereby assigns to Dealer as its exclusive sales territory the area circumscribed in red on the map attached hereto. This assigned territory may be enlarged or limited by the parties upon mutual agreement.

3. (a) Company will deliver products to Dealer daily excepting Sundays and Wednesdays, no later than 5 o'clock A.M. Company shall be excused from this requirement if unable to deliver due to weather or road conditions making such deliveries impractical.

(b) Dealer must pay for all purchases net weekly upon receipt of invoice failing which Company

may suspend deliveries and/or terminate this agreement on three (3) days advance written notice.

(c) Company will accept in payment of invoices cash, cashier checks, or checks drawn on Dealer.

4. Company will supply Dealer at Dealer's expense all special bread and cake display racks ordered by Dealer subject, however, to Company's approval thereof. Dealer will be required to maintain all racks in good merchandising condition.

5. Each account will be served with full rack service with Dealer crediting each account for stale returns and damaged goods. Dealer will be responsible for the expense of all stale returns and damaged goods.

6. Dealer agrees to return to Company from time to time all containers and racks of Company used in the shipment of products to Dealer. Upon termination of this agreement, Dealer will reimburse Company for any shortages in the return of shipping containers and racks at Company's expense.

7. At all times during the term of this agreement, Dealer shall, at its expense, maintain comprehensive general public liability and property damage insurance with an insurance company acceptable to Company naming Company as additional insured. Said insurance shall be written in limits of no less than $100,000/$300,000 bodily injury and $25,000 property damage. A certificate evidencing said coverage shall be delivered to Company on demand.

8. The obligation of Company to deliver products to Dealer and Dealer's obligation to purchase its requirements of products from Company shall be subject to interruption or delays caused by strikes, labor difficulties, acts of God, equipment failure, and casualties not within the control of the parties hereto.

9. In the event the dealership is sold to a third party, this contract will continue in effect as to said

third party provided it shall meet Company's credit requirements.

10. Dealer covenants and agrees as follows:

a. To service all accounts in his territory as often as may be necessary to develop maximum sales, but at least once a day excluding Sundays.

b. To install and maintain point of purchase material, supplied by Company at its expense, in accordance with the recommendations of Company and in amounts adequate to insure maximum sales and advertising benefit from promotional programs.

c. To conform to Company's code requirements for the age of products purchased from Company and sold to Dealer's accounts.

d. To sell in its territory only products carried by Company in its line or those for which Dealer obtains prior written approval from the Company.

e. To keep and maintain route books containing the name, address, and weekly purchases of each account in Dealer's territory. These route books shall be deemed an asset of the dealership and shall be transferred with the dealership in accordance with the provisions of this agreement.

f. To operate and maintain in a safe and sanitary condition delivery trucks adequate to properly sell and service all accounts in the territory.

g. To comply at all times with any applicable Federal, State or Local Food and Drug Laws and Regulations.

h. To maintain, at Dealer's expense, sanitary warehouse space for the receipt and storage of products purchased from Company, said ware-

house space to have proper access for a transport trailer.

i. Sell all products purchased from Company at established wholesale prices and in accordance with the Company's established discount policies.

j. Install tray racks in Dealer's delivery trucks at Dealer's sole expense.

11. In the event Dealer shall breach any terms of this agreement including any of the covenants set forth in Paragraphs 3 and 10 hereof, then Company may terminate this agreement on ten days' advance written notice.

12. In the event of termination of this agreement for any reason whatsoever, Dealer agrees to obliterate any and all advertisements and references to Company or Company's trademarks from its delivery equipment before it is used for any other purpose whatsoever.

13. Except as otherwise provided herein, this agreement shall remain in effect for the period of five (5) years from the date hereof and shall be automatically renewed from year to year thereafter provided, however, that either party may terminate this agreement after five (5) years or at the end of any anniversary year thereafter upon ninety (90) days' advance written notice.

14. Company agrees to render to Dealer at no cost to Dealer the various services outlined below:

(a) Company will give Dealer technical assistance and instruction for the design and installation of tray racks in Dealer's delivery trucks.

(b) All merchandise ordered by Dealer will be transported on standard transport trays and racks.

(c) Company will make available to Dealer 36 man days of sales service during each year of

this agreement for the development of bread, sweet goods and cake sales in Dealer's territory and the training of Dealer's sales supervision.

(d) Company will install transport unloading door in Dealer's warehouse in Durango, Colorado, will supply on a loan basis a power ramp for unloading transport racks and will do any necessary preparation of the drive area for parking a transport trailer.

(e) Company will supply Dealer, on a loan basis, with 20 backroom racks for the storage of bakery products in grocery stores together with one hand dolly for each route operated by Dealer.

(f) Company will maintain the paint on all Dealer's route trucks and will supply Wonder Bread and Hostess Cake truck decals, all at Company's expense.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized representatives the day and year first above written.

ATTEST: CONTINENTAL BAKING COMPANY

[Illegible] By /s/ Herbert Van Wyk
HERBERT VAN WYK

ATTEST: SHEPPARD BAKING COMPANY

/s/ Melvin C. Hebert
MELVIN C. HEBERT

• • • •

STIPULATION EXHIBIT 34A

CONTINENTAL BAKING COMPANY
(INCORPORATED)

Executive Offices

Halstead Avenue
Rye, New York 10580

P.O. Box 731 Telephone (914) 967-4747

January 3, 1966

Joseph J. Gercke, Esq.
Chief, Compliance Division
Bureau of Restraint of Trade
Federal Trade Commission
Washington, D.C.

Re: Continental Baking Company
Docket No. 7880

Dear Mr. Gercke:

This is in response to your letter of May 24, 1966 requesting that I amend my annual letter reporting compliance during the prior year, which was dated January 3, 1966, and also supply certain information respecting the Mack Baking Company of Bangor, Maine. In accordance with the numbered paragraphs of your letter the information requested concerning Mack is as follows:

(1) Continental does supply bread and bread-type rolls to Mack. Continental became a supplier of Mack so many years ago that no one now can accurately state when that relationship began. Beginning on or about April 10, 1965 Continental began supplying Mack under the terms of a letter agreement, a copy of which is enclosed. It is not possible to state the quantities delivered to Mack on an average daily, weekly and monthly basis, or on any other basis, between May 11, 1962 and April 1965. Since April 11, 1965 Continental has sold to Mack an average of $58,838 per month. This figure, however, includes cake and sweet goods products. Bread

products supplied Mack have been produced at the following Continental plants: Holyoke and Natick, Massachusetts; and New Haven and East Hartford, Connecticut. We are informed that Mack also purchases bread and bread-type roll products from the De Lordge Baking Company and also from a retail baking company in Bangor. Mack distributes its products in the same manner as any wholesale bakery or wholesale distributor. It sells restaurants, grocery stores and institutions. Its distribution system is 100 per cent owned by Mack. The products are distributed under Continental's trade name "Wonder" and also under the trade names "Sunbeam" and "Mack's", both of the latter two being owned by Mack.

2. Mack does not now produce any bread or bread-type rolls.

3. Mack did at one time produce such products, and terminated production on or about April 10, 1965. We have no knowledge of the quantities produced by Mack in the preceding one-year period, or any other time.

4. Continental did not acquire any right, title or interest in any of Mack's assets.

5. Continental has made no payments of money to Mack.

6. In the Bangor area the standard size loaf of bread is the one-pound 4-ounce loaf. This sells at 24.5 cents wholesale and 31 cents retail.

Neither in the past year, nor at any time since May 11, 1962 has Continental acquired any assets of any company engaged in the production and sale of bread or bread-type roll products.

Continental has no reason to request that this report be given a confidential clarification under Section 1.132 (6) of the Commission's Rules.

Very truly yours,

/s/ William J. Whamond
WILLIAM H. WHAMOND
Secretary
CONTINENTAL BAKING COMPANY

WJW:mz

STIPULATION EXHIBIT 35

CONTINENTAL BAKING COMPANY
(INCORPORATED)

Executive Offices

Halstead Avenue
Rye, New York 10580

P.O. Box 731 Telephone (914) 967-4747

January 3, 1967

Joseph J. Gercke, Esq.
Chief, Compliance Division
Bureau of Restraint of Trade
Federal Trade Commission
Washington, D.C. 20025

Re: Continental Baking Company
Docket No. 7880

Dear Mr. Gercke:

This will supplement through to the year end our recent communications with you concerning compliance. Continental has not purchased either directly or indirectly the stock or assets, or any part thereof, of any company engaged in the production and sale of bread and bread-type rolls.

We understand that recently Mr. Lars Janson of your staff has been interviewing some of our distributors in the western states. This causes us some surprise, both because whatever he wants to know is available from us, and because it suggests that you see something in our acquisition of new distributors which is inconsistent with our cease and desist consent order.

Particularly in the western states where distances between plants and markets are apt to be so great, we rely very heavily upon independent distributors to obtain ade-

quate distribution of our products. In some plants the percentage handled by independent distributors is about fifty per cent. New distributorships are continually being added, while existing distributorships are sometimes abandoned and sometimes are sold by the distributor to another distributor with, of course, our consent. Occasionally, as in Missoula, we acquire the distribution assets of an independent distributor. As was the case there, this usually occurs because the distributor wants to be relieved of the problems of running an independent business and wishes, instead, to become an employee of Continental, thereby obtaining pension rights and other benefits. Such acquisitions of course do not require Commission approval because the distribution assets acquired are not acquired from a company engaged in the production of bread and bread-type rolls.

Occasionally we add on a new independent distributor who was himself up to that time engaged in the production and sale of his own bread products. When such an individual decides to discontinue production (usually because the small operations are increasingly uneconomical), he will attempt to find some other company to supply him with products if he desires to remain in the business of distributing bakery products at wholesale. The usual source of supply is from a company not then engaged in the distribution of bread products in his market area—those companies which are competing with that company are apt to decline to supply him and instead try to secure the business for themselves. This was the situation in both Durango and Casper. In both of these markets Continental was not engaged in the distribution of bread and bread-type roll products. For both of these companies Continental was the most feasible supplier and probably if Continental had not agreed to supply them as distributors they would not have been able to stay in the wholesale bakery business.

Since distribution arrangements such as these are very common in the industry, both for Continental and for other wholesale bakers, the terms of the arrangements are quite standard and not subject to any substantial

bargaining. Independent distributors are charged the wholesale plant price as it may fluctuate from time to time, less a percentage discount. No changes in the distributor's distribution area are contemplated, and it is understood that the distributor will be exclusive in his area. The distributor retains complete control over his route structures and employees. There are no changes in his customer list, and he is expected to use his best efforts to develop the business and add new customers. In that regard he has independent control over the amounts spent for his own advertising and other promotional efforts. The distributors maintain control over their own retail prices, as well as credit terms they may choose to grant to their customers. Selection of which Continental varieties, and the amounts of each which are to be marketed, is entirely up to the business judgment of the distributor. The independent distributors also maintain ownership and control over their own distribution equipment, maintenance facilities, warehouse and distribution facilities, methods of accounting and financial records, etc. They remain, in short, individual entrepreneurs.

We trust this letter meets with the additional information you have requested.

Very truly yours,

CONTINENTAL BAKING COMPANY

/s/ Roy M. Anderson
ROY M. ANDERSON
Vice-President and General Counsel

RMA:eb

Subscribed and sworn to before me this 3rd day of January, 1967.

/s/ Ethel O. Becker
Notary Public

ETHEL O. BECKER
Notary Public, State of New York
No. 60-0212260
Qualified in Westchester County
Term Expires March 30, 1967

STIPULATION EXHIBIT 36

Aug. 2, 1968

Honorable Ramsey Clark,
The Attorney General,
Department of Justice,
Washington, D.C. 20530

Re: Continental Baking Company,
FTC Docket No. 7880.

My dear Mr. Attorney General:

Pursuant to the provisions of Section 16 of the Federal Trade Commission Act, the Commission hereby certifies the facts of violations of its consent order to divest and to cease and desist in the above-captioned matter.

The Commission has reason to believe, in certifying these facts, that Continental Baking Company has violated and is continuing to violate the said order's prohibition against making acquisitions, and therefore recommends that appropriate proceedings be instituted for the recovery of civil penalties, as provided for in Section 11(1) of the Clayton Act and Section 5(1) of the Federal Trade Commission Act, and certain injunctive relief.

The proposed suit results from original proceedings instituted by the Commission under Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act against Continental Baking for its acquisitions of certain competitors engaged in the production and sale of bread and bread-type rolls. Defendant consented to the entry and issuance of the order herein, by the Commission on May 11, 1962, which, among other things, prohibits Continental Baking for a period of ten years from acquiring any interest in any concern producing and selling bread and bread-type rolls without prior Commission approval.

The recommended suit charges defendant with making separate acquisitions of all or a part of the assets of three independent bakery concerns located, respectively, in Missoula, Montana; Casper, Wyoming and Durango,

Colorado. Prior Commission approval was not requested by defendant before making such acquisitions, and the Commission has not given any such approval. The acquisitions followed a common pattern whereby the independent bakery companies, pursuant to agreements and arrangements with defendant, terminated the production of bread and bread-type rolls under their own labels and immediately commenced to distribute bread and bread-type rolls produced by the defendant under defendant's labels to customers and in sales areas formerly supplied with products produced by the independent bakeries. With the change over and thereafter, defendant made a full or partial acquisition of tangible and intangible assets from these independent concerns. In the case of the Missoula bakery, defendant over a one-year period acquired not only the good will, sales routes and customer lists, but actually took over accounts receivable, trucks and other physical assets of this bakery. In the case of the Casper, Wyoming bakery, the defendant acquired only a part of the assets and arranged through a third party to take over the operating structure of this bakery. The acquisition of Durango bakery also consisted of a partial take over of tangible assets. These acquisitions by defendant violated and are continuing to violate the Commission's order, which prohibits defendant ". . . from acquiring, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital, or assets of any concern . . . engaged . . . in the production and sale of bread and bread-type rolls . . ."

Transmitted herewith are the following:

1. Original and six (6) copies of the draft complaint.

2. Original and three (3) copies of the trial memorandum in support of the complaint, to each of which is attached copies of the following:

   a. Documentary Exhibits Nos. 1 through 23.
   b. Investigational Hearing Transcripts No. 1 and No. 2.
   c. Investigational Reports Nos. 1 through 3.

The Commission would appreciate being advised as to when and where this recommended case may be filed. Also, we will be pleased to furnish any assistance that may be necessary or useful for the processing and filing of this civil penalty action. Commission attorneys who are familiar with the facts of this case will be made available for assisting and working with the United States Attorney in his preparation and trial of this suit.

By direction of the Commission.

PAUL RAND DIXON
Chairman

Enclosures.

EGGruis:dg

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. C-1220

UNITED STATES OF AMERICA, PLAINTIFF

v.

ITT CONTINENTAL BAKING COMPANY, DEFENDANT

SUPPLEMENTAL STIPULATION

It is hereby stipulated and agreed by and between the undersigned attorneys for Plaintiff and Defendant respectively, that:

1. Stipulation Exhibit 33 attached to the Stipulation dated December 1, 1970, should be replaced by the attached new Stipulation Exhibit 33, letter, dated January 3, 1966, from William J. Whamond, Secretary, Continental Baking Company, to Joseph W. Shea, Secretary, Federal Trade Commission.

2. The attached letter, dated February 4, 1965, from Hollis H. Sims, Vice President, Continental Baking Company, to Mack Baking Company, a copy of which was enclosed with the letter identified as Stipulation Exhibit 34A, should be added to the Stipulation dated December 1, 1970, as Stipulation Exhibit 34C.

/s/ James E. Corkey
Of Counsel

/s/ Carolyn J. McNeill
Attorney for Plaintiff

/s/ John H. Schafer
Of Counsel

[Illegible]
Attorney for Defendant

Dated: February 1971

Approved: _____
U.S. District Judge

Dated: _____, 1971

STIPULATION EXHIBIT 34C

CONTINENTAL BAKING COMPANY
(INCORPORATED)

Executive Offices

Halstead Avenue
Rye, New York

P.O. Box 731 Telephone WOodbine 7-4747

February 4, 1965

Mack Baking Company
104 Center Street
Bangor, Maine

Gentlemen:

This will confirm arrangements made with you whereunder we agree to sell to you and you agree to purchase from us various bakery products produced by us under our various advertised brands. This arrangement will be subject to the following terms and conditions:

1. All products delivered to you pursuant to orders placed by you from time to time will be delivered daily by our own transport trailer F.O.B. your plant in Bangor, Maine.

   Products will be shipped in nesting wire baskets for which we will charge you at the rate of $3.00 for each basket. Empty baskets will be returned to us daily for which you will be allowed a credit of $3.00 each. Said wire baskets will be depreciated by us on a two year basis. In the event you should for any reason discontinue purchasing products from us pursuant to this contract within two years from the date hereof you agree to purchase said wire baskets from us at that time at our then book value.

2. Products covered by this agreement will carry our various regular brand names and will include bread, buns, cake, sweet goods and donuts. You agree to pay for said products at our prevailing plant wholesale prices less 38-½% discount in the case of bread and buns and less 30% discount in the case of cake, sweet goods and donuts. These discounts may be adjusted by us in the event your weekly volume of purchases drops below an average of $15,000.00 per week, computed at regular wholesale prices, over a period of four (4) consecutive weeks.

   In the event we should elect to adjust a discount rate, we will give you one (1) month's written notice of the change and should you not desire to make purchases under said revised discount rates, you may terminate this agreement on the effective date of the change by giving us at least three (3) weeks' advance written notice of termination.

3. Products sold by us will be billed to you weekly on each Saturday and payment of said invoices must be received by us no later than the following Saturday at our Natick plant.

4. We agree to sell to you at our cost any advertising truck decals and point-of-purchase materials carried by us in inventory.

   It is further agreed that you may order our standard advertising commercials whether radio, newspaper or television from Ted Bates Advertising Agency for which you will pay said Agency the standard media costs plus the Agency fee (15%). No charge will be made to you for the production costs in creating the advertising.

5. In consideration of your purchases from us, we agree to refrain from selling any bakery products under our regular advertised brands to any other person, firm, or corporation for re-sale in the following territory in which you will have said exclusive rights: The territory outlined in red represents the present exclu-

sive territory. The territory outlined in blue represents exclusive territory to be acquired at the option of Mack Baking Company.

In consideration for this exclusive arrangement, you agree not to handle any bakery products other than those produced by you or sold to you by us pursuant to this contract.

6. In case that any advertising pertaining to our products be placed on any of your delivery equipment, you agree to obliterate all such advertisements before such delivery equipment is used for any purpose other than in connection with the sale of our products.

7. This agreement shall remain in effect for the period of five (5) years from the date hereof and shall be automatically renewed from month-to-month thereafter unless or until termination by either party on at least six (6) months' advance written notice.

8. It is agreed that this contract shall not be assigned by you without our prior written consent.

Please signify your acceptance of the above terms and conditions by signing and returning the copy of this letter attached hereto.

Very truly yours,

CONTINENTAL BAKING COMPANY

By /s/ Hollen H. Sims
HOLLEN H. SIMS
Vice-President

ACCEPTED:

MACK BAKING COMPANY

By—[Illegible]

Date—February 9, 1965

SUPREME COURT OF THE UNITED STATES

No. 73-1290

UNITED STATES, PETITIONER

v.

ITT CONTINENTAL BAKING COMPANY

ORDER ALLOWING CERTIORARI—Filed April 29, 1974.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1974 547018 262